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**TRANSCRIPT OF RECORD**

469281  
L.C.

**Supreme Court of the United States**

**OCTOBER TERM, 1941**

**No. 112**

C. L. WILLIAMS, INDIVIDUALLY AND AS DULY  
APPOINTED AND AUTHORIZED AGENT AND  
REPRESENTATIVE OF HERBERT AIKEN, ET  
AL., PETITIONERS,

vs.

**JACKSONVILLE TERMINAL COMPANY**

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT

**PETITION FOR CERTIORARI FILED MAY 31, 1941.**

**CERTIORARI GRANTED OCTOBER 13, 1941.**

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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF FLORIDA.

Civil Action. File No. 237-J—Civil.

C. L. WILLIAMS, Individually and as duly appointed and authorized agent and representative for HERBERT AIKENS, FRANK ALEXANDER, WILLIE ANDERSON, ROBERT ATKINSON, JR., VANDY BLAKE, CHARLES BROOKS, BRITT BYTHEWOOD, CHRIS COHEN, FRANK CROCKETT, E. Z. DANIEL, JR., CLARENCE DAVIS, WILLIAM EVERETT, HENRY FOLSON, FLEMING HAWKINS, ROBERT HADLEY, J. P. HILLS, ALVIN LEWIS JONES, ERNEST JONES, SAM JONES, JAMES JOHNSON, EDDIE KITTLES, ANDREW LANG, DAVID LANGLEY, FRANK LEGGETT, CHARLES MOSES, S. W. OWNES, FRANK PARKER, HENRY PERRY, WILLIAM PETTY, EDWARD PUGH, RICHARD ROBY, CHARLES SAMPSON, J. W. SPEIGHT, BASSIE THOMAS, EDWIN A. THOMAS, LACY THOMAS, HUGH H. THOMPSON, ROBERT TOWNSELL, JAMES TOWNSELL, JOHN WALLACE, HENRY WHITE, C. L. WILLIAMS, FLEMING, WILLIAMS, FRANK WILLIAMS, HENRY WILLIAMS, JOHN WILLIAMS, AND WILLIE WILLIAMS,

Plaintiffs,

versus

JACKSONVILLE TERMINAL COMPANY, a corporation,  
Defendant.

COMPLAINT.

I.

The plaintiff, C. L. Williams, is a resident of Duval County, State of Florida, and is the duly appointed and author-

ized agent of Herbert Aikens, Frank Alexander, Willie Anderson, Robert Atkinson, Jr., Vandy Blake, Charles Brooks, Britt Bythewood, Chris Cohen, Frank Crockett, E. Z. Daniel, Jr., Clarence Davis, William Everett, Henry Folson, Fleming Hawkins, Robert Hadley, J. P. Hills, Alvin Lewis Jones, Ernest Jones, Sam Jones, James Johnson, Eddie Kittles, Andrew Lang, David Langley, Frank Leggett, Charles Moses, S. W. Owens, Frank Parker, Henry Perry, William Petty, Edward Pugh, Richard Roby, Charles Sampson, J. W. Speight, Bassie Thomas, Edwin A. Thomas, Lacy Thomas, Hugh H. Thompson, Robert Townsell, James Townsell, John Wallace, Henry White, C. L. Williams, Fleming Williams, Frank Williams, Henry Williams, John Williams, and Willie Williams (hereinafter designated as plaintiffs), so appointed pursuant to Section 16 (B) of the "Fair Labor Standards Act of 1938", 29 U. S. C. A. 201 to 219 (June 25, 1938, c-676, Paragraph 1, 52 Stat. 1060).

## II.

Jurisdiction is conferred upon this Court by Section 41 (8), 28 U. S. C. A. (Judicial Code) 24, conferring unto the District Court jurisdiction of "all suits and proceedings arising under any law regulating commerce"; and jurisdiction is also conferred upon this Court by Section 16 (b) of said "Fair Labor Standards Act", 29 U. S. C. A. 216.

## III.

The defendant, Jacksonville Terminal Company, a corporation, was, at all times herein mentioned, and now is a corporation organized and existing under and by virtue of the laws of the State of Florida, having its principal place of business in the City of Jacksonville, Duval County, Florida, and within the Southern District of Florida, United States of America.

## IV.

Plaintiffs seek to recover from defendant unpaid wages and compensation due them individually, and an additional equal amount as liquidated damages, and a reasonable attorney's fee and costs of this action, all in pursuance to Section 16 (b), "Fair Labor Standards Act", 29 U. S. C. A. 261.

## V.

The defendant maintains and operates a railroad terminal and terminal facilities in the City of Jacksonville, Duval County, Florida, including ticket offices, passenger waiting rooms, restaurants, bureaus, baggage facilities, tracks, switches, light, mechanical devices, loading platforms, baggage trucks and tractors, and all other machinery necessary for the delivery to, on and off the trains, of persons, baggage, and United States Mail routed or traveling in Interstate Commerce, and used and necessary in the transportation of persons and property in Interstate Commerce.

That said facilities are operated by said defendant for the use and benefit of the Florida East Coast Railway Company, the Atlantic Coast Line Railway Company, the Seaboard Air Line Railway Company and the Pullman Company, each of said railway companies operating trains, engines, baggage cars, express cars, mail cars, passenger cars, sleeping cars and dining cars, for the transportation of United States mail, passengers and baggage in Interstate Commerce.

## VI.

That the plaintiffs are each employed by the defendant as porters, ushers, attendants, messengers, and commonly designated "Red Cap", and were and are now employed by defendant to handle the

hand baggage, clothes, personal effects and traveling effects and luggage of the passengers using said terminal and to otherwise assist and aid said passengers in their passage through or sojourn in and through said terminal. That substantially all of the passengers so assisted by plaintiffs were and are in transit to, from and among the several States of the United States of America. That said plaintiffs were and are required to unload baggage of the passengers on various incoming trains from other States than the State of Florida, stopping at said station, and were and are likewise required to assist and unload passengers from said trains, and plaintiffs were and are likewise further required to help and assist the old or sick or crippled passengers and to use certain wheel chairs and stretchers furnished by the defendant to wheel or carry the passengers using said terminal, either from or to the place of embarking at said terminal or from or to the trains using said terminal.

Plaintiffs, and each of them, were so employed by the defendant from the 24th day of October, 1938; to and including the 1st day of July, 1940, and are now so employed. That under Section 6 of the "Fair Labor Standards Act of 1938", 29 U. S. C. A. 206, the defendant was required to pay to each of the plaintiffs wages of not less than twenty-five cents (.25) per hour from October 24th, 1938, to October 23rd, 1939, and wages of not less than thirty cents (.30) per hour from and after October 24th, 1939. That notwithstanding the provisions of said Act, the defendant has failed, neglected and refused to pay the plaintiffs the said minimum wage from the said 24th day of October, 1938, to the 1st day of July, 1940, but has paid said plaintiffs only a small portion thereof.

That the plaintiffs attach hereto a Bill of Particulars which contains the number of hours of employment of each of plaintiffs, upon which they were entitled to

5           twenty-five cents (.25) per hour as wages, and the number of hours of employment of each of plaintiffs, upon which they were entitled to thirty cents (.30) per hour; that said Bill of Particulars also contains the amount paid each of plaintiffs on account of said wages and the balance due each of plaintiffs on account of said wages; that the total of such balance due and owing all of the plaintiffs, is \$59,923.08.

Wherefore, the respective plaintiffs demand judgment against the defendant for the recovery of their individual wage and an additional equal amount as liquidated damages, and also in addition to the judgment that this Court will award to the plaintiffs a reasonable attorney's fee for each of plaintiffs to be paid by the defendant and the costs of this action, all pursuant to and as authorized by Section 16 (b) of said "Fair Labor Standards Act of 1938", 29 U. S. C. A. 216.

FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for Plaintiffs.

525 Barnett National Bank Bldg.,  
Jacksonville, Florida.

# SUMMONS.

To the above named Defendant:

You are hereby summoned and required to serve, upon Frank F. L'Engle, plaintiff's attorney, whose address is 525 Barnett National Bank Building, Jacksonville, Florida, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do

so, judgment by default will be taken against you for the relief demanded in the complaint.

EDWIN R. WILLIAMS,

Clerk of Court

By L. GIBSON HOUSE,

(Seal of Court)

Deputy Clerk.

Date: August 19, 1940.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

### RETURN ON SERVICE OF WRIT.

I hereby certify and return, that on the 19th day of August 1940, I received the within summons at Jacksonville, Florida, and executed it at Jacksonville, Florida, August 19, 1940, by serving the within named Jacksonville Terminal Company by exhibiting this original writ and delivering a true copy of hereof, together with a copy of the complaint to John L. Wilkes, President of the said Jacksonville Terminal Company, and making known to him the contents of the same.

#### Marshal's Fees

Travel 1 mi.	\$ .06
Service	2.00
	<hr/>
	\$2.06

CHESTER S. DISHONG,

United States Marshal.

By E. JACKSON BUTLER,

(E. Jackson Butler)

Deputy United States  
Marshal.

Subscribed and sworn to before me, a ..... this  
day of ..... 19...

(Seal) .....

### ANSWER.

1. The Complaint fails to state a claim against Defendant upon which relief can be granted.

2. Defendant admits the allegations contained in Paragraphs 1, 2, 3, and 5 of the Complaint, and as to Paragraph 4 admits that plaintiffs are seeking to recover as therein alleged, but denies that any unpaid wages or compensation is due from defendant to plaintiffs, and denies that plaintiffs are entitled to recover any amount as liquidated damages, or attorney's fees and costs.

3. Answering the first division or section of Paragraph 6 of the Defendant says that all of the services performed by plaintiff and by each and every other person named in the complaint and for whom he sues, were performed within the station of the Defendant at Jacksonville, Florida, and all such related to individual passengers and hand-baggage and luggage and were performed only at the request of an individual requesting such service.

Answering the second division or section of Paragraph 6 Defendant denies and says it is not true that the Plaintiff and other persons for whom suit is brought, were employed by the Defendant on the 24th day of October 1938 up to the time of the institution of this suit in commerce and says that Section 6 of the Fair Labor Standards Act of 1938 was not applicable to their employment, and denies and says that it is not true that Defendant has

failed and neglected to pay the Plaintiff and other persons named in the Complaint a wage equal to the minimum wage provided by that Act for the period above named but says that it has paid the Plaintiff and other persons for whom he sues a sum equal to the sum provided in said Act.

And further answering the third section of Paragraph 6 Defendant says that the Bill of Particulars attached to the Complaint is not correct in its statement of hours of employment of the several persons therein named and the amount which was received as wages by each of them during the period covered by said Bill of Particulars and denies and says it is not true that there is due and unpaid to the Plaintiff or any other persons on account of wages in the sum of \$59,923.08 or any part thereof. But on the contrary says that the Defendant has paid in full to the Plaintiff and all others represented by him the full amount of the minimum wages as provided by the Fair Labor Standards Act of 1938 for such period.

4. And further answering Defendant says that payment was made in the amounts as hereinafter stated and that the hours in which plaintiff and each person represented by him worked during such time are shown by the Bill of Particulars attached.

9 5. This Defendant denies every allegation in the Complaint which is not in this Answer admitted or denied.

6. Further answering, Defendant says that prior to July 10, 1937, it had permitted red caps as licensees to be upon its premises and perform on their own account services for passengers at their express direction or request, and for such compensation as might be arranged between the red caps and the passengers, such service

consisting of the handling of hand luggage to or from trains in and about the station; that on or about July 10, 1937, the International Brotherhood of Red Caps, pursuant to Section 1, Fifth Paragraph, of the Railway Labor Act, as amended, filed a petition with the Interstate Commerce Commission (hereinafter referred to as the Commission) against certain railroads, praying that the Commission amend or interpret its orders revising and classifying employees and subordinate officials so as to include red caps in such classification. The Commission took jurisdiction of the matter and broadened the scope of its inquiry to include certain other Class I railroads, terminal companies, including this Defendant, and others, and issued a questionnaire requiring the carriers which had been made parties to the proceeding to answer, under oath, questions relating to the status of red caps. The subject was docketed by the Commission as Ex Parte No. 72 (Sub-No. 1). "In the matter of regulations concerning class of employees and subordinate officials to be included within the term 'Employee' under the Railway Labor Act." The Commission, having received answers to said questionnaires on September 29, 1938, ruled (299 I. C. C. 410) that red caps were employees within the definition contained in the Railway Labor Act, as amended. Under said order of the Interstate Commerce Commission said red caps performed said above mentioned services for passengers as employees of Defendant, said services were performed for said passengers by Defendant, and compensation paid for said services by said passengers was compensation to Defendant.

10           7. On October 24, 1938, the Fair Labor Standards Act became effective and on and after that date said red caps continued to engage in the same activities as before with respect to the performance of said services for passengers at defendant's station. Upon the taking effect of said Act, and in view of the provisions

thereof and of said above mentioned order of the Interstate Commerce Commission, Defendant in order not unduly to disrupt existing operating practices did not require red caps to pay over to defendant in cash the compensations received from passengers but to report the same to Defendant and retain the same as payment pro tanto of the minimum wage under Section 6 of the Fair Labor Standards Act and did permit the said red caps so to do.

8. Before October 24, 1938, the date on which Section 6 of the Act became effective, Defendant, in view of the foregoing and to comply with said Act, delivered to each of said red caps a notice in the following form (except that said notice was addressed to said red caps and was signed by defendant):

"In view of the requirements of the Fair Labor Standards Act, effective October 24, 1938, and in consideration of your hereafter engaging in the handling of hand baggage and travelling effects of passengers or otherwise assisting them at or about stations or destinations, it will be necessary that you report daily to the undersigned the amounts received by you as tips or remuneration for such services.

"The carrier hereby guarantees to each person continuing such service after October 24, 1938, compensation which, together with an including the sums of money received as above provided, will not be less than the minimum wage provided by law.

"You are privileged to retain subject to their being credited on such guarantee all such tips or remuneration received by you except such portion thereof as may be required of you by the undersigned for taxes of any character imposed upon you by law and collectible by the undersigned.

"All the matters above referred to are subject to the right of the carrier to determine from time to time the number and identity of persons to be permitted to engage in said work and the hours to be devoted thereto to establish rules and regulations relating to the manner, method and place of rendition of such service, and the accounting required."

11. 9. On and after October 24, 1938, each of said red caps, pursuant to said Notice, and during the period covered by this action, retained all tips which he received from passengers of Defendant, and made daily reports to Defendant of the amounts alleged by him to have been so received. In most instances the tips so received and retained equalled or exceeded the minimum wage requirement of the Act: but in all cases where the amounts so reported were less than the minimum wage requirement, Defendant paid to each red cap so reporting, the deficiency between the tips so reported and the minimum set forth in said Section 6. This arrangement has been commonly known as the "accounting and guarantee plan."

10. Defendant attaches hereto a Bill of Particulars which shows: (1) The number of hours worked by the Plaintiff and by each and every other person named in the Complaint and for whom he sues from October 24, 1938, up to July 1st, 1940; (2) The amount of compensation so called tips, reported by each one of such persons as received directly from passengers; (3) The amount received by each one of Plaintiffs directly from Defendant in addition to the amount shown as having been received by payment direct to each one of Plaintiffs by passengers and for the account of Defendant as set forth; (4) The amount of the minimum wage of each of said Plaintiffs under Section 6 of the Fair Labor Standards Act of 1938, if applicable to them.

11. Defendant denies and says that it is not true that it is indebted to C. L. Williams, individually or as duly appointed and authorized agent or representative of the other persons named in the Complaint filed herein in any amount whatsoever, and denies that he is entitled to judgment, individually or as duly appointed and authorized agent and representative for the other persons named in the Complaint for unpaid wages, for liquidated damages, for an attorney's fee, for costs, or for any other amount whatsoever.

12 Wherefore Defendant prays that Plaintiff take nothing by his suit and that Defendant have judgment adjudicating that neither Plaintiff nor any of the other persons named in Plaintiff's Complaint have any claim against Defendant, and Defendant prays for all costs herein.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant,  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

Received a copy of the above Answer this 9th day of  
September, A. D. 1940.

FRANK F. L'ENGLE,

Attorney for C. L. Williams,  
Individually, et al.

525 Barnett National Bank Bldg.,  
Jacksonville, Florida.

13 Jacksonville Terminal Company

Bill of Particulars.

Total hours worked, earnings, etc., of Red Caps for  
period October 24, 1938 to June 30, 1940, inclusive.

Recapitulation.

1—Total hours worked .....	150,416
2—Total earnings .....	\$40,594.69
3—Amount received directly from Jacksonville Terminal Company .....	\$ 8,321.33
4—Total tips applied to earnings .....	\$32,273.36
5—Total tips reported by Red Caps .....	\$35,293.12
6—Amount actually received by Red Caps over minimum wage .....	\$ 3,019.76

Accounting Department, Jacksonville, Florida, October  
9, 1940.

## BILL OF PARTICULARS.

## Jacksonville Terminal Company.

Frank Crockett:

## Hours Worked:

10-24-38 to 10-23-39 inc. 1,727.68 Hrs.			
@ 25¢ .....	\$431.92		
10-24-39 to 6-30-40 inc. 910.33 Hrs. @			
30¢ .....	273.10	\$705.02	

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.....	\$417.54		
10-24-39 to 6-30-40 inc.....	152.81	570.35	

Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.....	44.97		
10-24-39 to 6-30-40 inc.....	120.33	165.30	735.65

Excess over minimum wages .....		\$30.63	
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Christopher Cohen:

## Hours worked:

10-24-38 to 10-23-39 inc. 2,326.99 hrs.			
@ .25 .....	\$581.75		
10-24-39 to 6-30-40 inc. 1, 552.74 hrs.			
@ .30 .....	465.82	\$1,047.57	

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc. ....	\$596.98		
10-24-39 to 6-30-40 inc. ....	320.08	917.06	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	41.04		
10-24-39 to 6-30-40 inc. ....	145.78	186.82	1,103.88

Excess over minimum wages .....	\$	56.31	
---------------------------------	----	-------	--

Hugh Thompson:

Hours worked:

10-24-38 to 10-23-39 inc. 2,207.02 hrs.			
@ .25 .....	\$551.76		
10-24-39 to 6-30-40 inc. 1,306.17 hrs.			
@ .30 .....	391.85	\$943.61	

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$543.28		
10-24-39 to 6-30-40 inc. ....	290.78	834.06	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	36.23		
10-24-39 to 6-30-40 inc. ....	101.12	137.35	971.41

Excess over minimum wages .....	\$27.80		
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Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

## Henry White:

## Hours worked:

10-24-38 to 10-23-39 inc.	2,279.54 Hrs.	
@ .25		\$569.89
10-24-39 to 6-30-40 inc.	1,570.08 Hrs.	
@ .30		471.02
		<u>\$1,040.91</u>

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$664.82	
10-24-39 to 6-30-40 inc.	380.45	1,045.27
		<u></u>

## Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	11.63	
10-24-39 to 6-30-40 inc.	90.70	102.33
		<u>1,147.60</u>

Excess over minimum wages	\$ 106.69
---------------------------	-----------

## James A. Johnson:

## Hours worked:

10-24-38 to 10-23-39 inc.	2,623.20 hrs.	
@ .25		\$655.80
10-24-39 to 6-30-40 inc.	1,984.00 hrs.	
@ .30		595.20
		<u>\$1,251.00</u>

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$696.03	
10-24-39 to 6-30-40 inc.	405.65	1,101.68
		<u></u>

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	\$ 61.47		
10-24-39 to 6-30-40 inc. ....	253.55	315.02	1,416.70

Excess over minimum wages ..... \$ 165.70

Robert Hadley:

Hours worked:

10-24-38 to 10-23-39 inc. 2,331.36 hrs.		
@ .25 .....	\$582.84	
10-24-39 to 6-30-40 inc. 1,578.17 hrs.		
@ .30 .....	473.45	\$1,056.29

Amount, reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	635.13	
10-24-39 to 6-30-40 inc. ....	259.68	894.81

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	23.98	
10-24-39 to 6-30-40 inc. ....	214.13	238.11 1,132.92

Excess over minimum wages ..... \$ 76.63

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

Herbert Aikens:

Hours worked:

10-24-38 to 10-23-39 inc.	2,366.09 hrs.	
@ .25		\$591.52
10-24-39 to 6-30-40 inc.	1,510.09 hrs.	
@ .30		453.03 \$1,044.55

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$562.79	
10-24-39 to 6-30-40 inc.	288.19	850.98

Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	52.23	
10-24-39 to 6-30-40 inc.	164.88	217.11 1,068.09

Excess over minimum wages ..... \$ 23.54

Bassie Thomas:

Hours worked:

10-24-38 to 10-23-39 inc.	2,477.67 hrs.	
@ .25		\$619.42
10-24-39 to 6-30-40 inc.	1,525.42 hrs.	
@ .30		457.63 \$1,077.05

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$734.48	
10-24-39 to 6-30-40 inc.	297.27	1,031.75

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	5.92		
10-24-39 to 6-30-40 inc. ....	162.12	168.04	1,199.79

Excess over minimum wages ..... \$ 122.74

Robert Townsell:

Hours worked:

10-24-38 to 10-23-39 inc. 2,414.58 hrs.		
@ .25 .....	\$603.65	
10-24-39 to 6-30-40 inc. 1,600.75 hrs.		
@ .30 .....	480.23	\$1,083.88

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$591.10	
10-24-39 to 6-30-40 inc. ....	283.21	874.31

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	\$ 50.94	
10-24-39 to 6-30-40 inc. ....	197.06	248.00 1,122.31

Excess over minimum wages ..... \$ 38.43

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

William Everett:

Hours worked:

10-24-38 to 10-23-39 inc. 2,333.62 hrs.		
@ .25 .....	\$583.41	
10-24-39 to 6-30-40 inc. 1,411.67 hrs.		
@ .30 .....	423.50	\$1,006.91

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$583.99	
10-24-39 to 6-30-40 inc. ....	308.40	892.39

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	49.66		
10-24-39 to 6-30-40 inc. ....	115.13	164.79	1,057.18

Excess over minimum wages .....	50.27
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Joe P. Hills:

Hours worked:

10-24-38 to 10-23-39 inc. 2,383.21 hrs.	
@ .25 .....	\$595.80
10-24-39 to 6-30-40 inc. 1,615.91 hrs.	
@ .30 .....	484.77 \$1,080.57

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$682.93
10-24-39 to 6-30-40 inc. ....	355.05 1,037.98

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	10.35	
10-24-39 to 6-30-40 inc. ....	133.47	143.82 1,161.80

Excess over minimum wages .....	101.23
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Charles Moses:

Hours worked:

10-24-38 to 10-23-39 inc.	2,455.67 hrs.	
@ .25		\$613.92
10-24-39 to 6-30-40 inc.	1,570.09 hrs.	
@ .30		471.03 \$1,084.95

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$649.40	
10-24-39 to 6-30-40 inc.	339.42	988.82

Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	41.18	
10-24-39 to 6-30-40 inc.	132.71	173.89 1,162.71

Excess over minimum wages ..... \$ 77.76

Robert Atkinson:

Hours worked:

10-24-38 to 10-23-39 inc.	2,312.65 hrs.	
@ .25		\$578.16
10-24-39 to 6-30-40 inc.	1,228.50 hrs.	
@ .30		<del>368.55</del> \$ 946.71

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$678.70	
10-24-39 to 6-30-40 inc.	247.40	926.10

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	17.12		
10-24-39 to 6-30-40 inc. ....	121.21	138.33	1,064.43

Excess over minimum wages ..... \$ 117.72

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

Henry Williams:

Hours worked:

10-24-38 to 10-23-39 inc. 2,345.18 hrs.		
@ .25 .....	\$586.30	
10-24-39 to 6-30-40 inc. 1,406.42 hrs.		
@ .30 .....	421.93	\$1,008.23

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$578.77	
10-24-39 to 6-30-40 inc. ....	272.02	850.79

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	42.00		
10-24-39 to 6-30-40 inc. ....	149.93	191.93	1,042.72

Excess over minimum wages ..... \$ 34.49

## Fleming Hawkins:

## Hours worked:

10-24-38 to 10-23-39 inc.	2,408.84 hrs.	
@ .25		\$602.21
10-24-39 to 6-30-40 inc.	1,581.59 hrs.	
@ .30		474.48 \$1,076.69

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$701.15
10-24-39 to 6-30-40 inc.	360.79 1,061.94

## Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	5.46	
10-24-39 to 6-30-40 inc.	113.75	119.21 1,181.15

Excess over minimum wages ..... \$ 104.46

## Britt Bythewood, Jr.:

## Hours worked:

10-24-38 to 10-23-39 inc.	1,621.02 hrs.	
@ .25		\$405.26
10-24-39 to 6-30-40 inc.	548.41 hrs. @	
.30		164.52 \$ 569.78

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$479.57
10-24-39 to 6-30-40 inc.	128.04 607.61

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	4.41		
10-24-39 to 6-30-40 inc. ....	36.50	40.91	648.52

Excess over minimum wages ..... \$ 78.74

David Langley:

Hours worked:

10-24-38 to 10-23-39 inc. 1,166.75 hrs.		
@ .25 .....	\$291.69	
10-24-39 to 6-30-40 inc. 1,450.93 hrs.		
@ .30 .....	435.28	\$ 726.97

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$329.55	
10-24-39 to 6-30-40 inc. ....	293.97	623.52

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	13.76		
10-24-39 to 6-30-40 inc. ....	142.95	156.71	780.23

Excess over minimum wages ..... \$ 53.26

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

Lacy Thomas:

Hours worked:

10-24-38 to 10-23-39 inc. 1,640.83 hrs.		
@ .25 .....	\$410.21	
10-24-39 to 6-30-40 inc. 1,090.26 hrs.		
@ .30 .....	327.08	\$ 737.29

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$599.46	
10-24-39 to 6-30-40 inc. ....	205.52	804.98
	<u>          </u>	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	7.57	
10-24-39 to 6-30-40 inc. ....	122.29	129.86    934.84
	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 197.55

Ernest Jones:

Hours worked:

10-24-38 to 10-23-39 inc. 1,096.08 hrs.	
@ .25 .....	\$274.02
10-24-39 to 6-30-40 inc. 1,159.17 hrs.	
@ .30 .....	347.75 \$ ,621.77
	<u>          </u>

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$370.92
10-24-39 to 6-30-40 inc. ....	167.20    538.12
	<u>          </u>

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	6.44
10-24-39 to 6-30-40 inc. ....	180.57    187.01    725.13
	<u>          </u>

Excess over minimum wages ..... \$ 103.36

Alvin Louis Jones:

Hours worked:

10-24-38 to 10-23-39 inc.	1,088.07 hrs.	
@ .25		\$272.02
10-24-39 to 6-30-40 inc.	1,224.00 hrs.	
@ .30		367.20 \$ 639.22

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$337.06	
10-24-39 to 6-30-40 inc.	270.73	607.79

Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	16.98	
10-24-39 to 6-30-40 inc.	98.20	115.18 722.97

Excess over minimum wages ..... \$ 83.75

James Townsell:

Hours worked:

10-24-38 to 10-23-39 inc.	1,632.71 hrs.	
@ .25		\$408.18
10-24-39 to 6-30-40 inc.	1,291.26 hrs.	
@ .30		387.38 \$ 795.56

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$440.43	
10-24-39 to 6-30-40 inc.	200.13	640.56

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	33.01		
10-24-39 to 6-30-40 inc. ....	188.56	221.57	862.13

Excess over minimum wages ..... \$ 66.57

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

Frank Alexander:

Hours worked:

10-24-38 to 10-23-39 inc. 1,846.94 hrs.			
@ .25 .....	\$461.74		
10-24-39 to 6-30-40 inc. 1,088.58 hrs.			
@ .30 .....	326.57	\$ 788.31	

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$559.78		
10-24-39 to 6-30-40 inc. ....	212.20	771.98	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	4.36		
10-24-39 to 6-30-40 inc. ....	114.41	118.77	890.75

Excess over minimum wages ..... \$ 102.44

## Frank Williams:

## Hours worked:

10-24-38 to 10-23-39 inc.	2,064.54 hrs.	
@ .25		\$516.14
10-24-39 to 6-30-40 inc.	1,222.92 hrs.	
@ .30		366.88 \$ 883.02

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$667.08	
10-24-39 to 6-30-40 inc.	278.50	945.58

## Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	4.23	
10-24-39 to 6-30-40 inc.	95.59	99.82 1,045.40

Excess over minimum wages ..... \$ 162.38

## John Williams:

## Hours worked:

10-24-38 to 10-23-39 inc.	1,773.70 hrs.	
@ .25		\$443.43
10-24-39 to 6-30-40 inc.	1,018.91 hrs.	
@ .30		305.67 \$ 749.10

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$472.78	
10-24-39 to 6-30-40 inc.	226.96	699.74

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	15.51		
10-24-39 to 6-30-40 inc. ....	79.20	94.71	794.45
Excess over minimum wages .....		\$	45.35

Willie Williams:

Hours worked:

10-24-38 to 10-23-39 inc. 1,449.45 hrs.			
@ .25 .....		\$362.36	
10-24-39 to 6-30-40 inc. 1,233.16 hrs.			
@ .30 .....		369.95	\$ 732.31

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	356.99		
10-24-39 to 6-30-40 inc. ....	167.95	524.94	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	36.62		
10-24-39 to 6-30-40 inc. ....	203.51	240.13	765.07

Excess over minimum wages ..... \$ 32.76

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

## Frank Leggett:

## Hours worked:

10-24-38 to 10-23-39 inc.	2,601.50 hrs.	
@ .25		\$650.38
10-24-39 to 6-30-40 inc.	1,964.50 hrs.	
@ .30		589.35
		<u>\$1,239.73</u>

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$621.75	
10-24-39 to 6-30-40 inc.	410.38	1,032.13
		<u></u>

## Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	89.73	
10-24-39 to 6-30-40 inc.	242.72	332.45
		<u>1,364.58</u>

Excess over minimum wages ..... \$ 124.85

## Edward Pugh:

## Hours worked:

10-24-38 to 10-23-39 inc.	1,132.14 hrs.	
@ .25		\$283.04
10-24-39 to 6-30-40 inc.	1,425.50 hrs.	
@ .30		427.65
		<u>\$ 710.69</u>

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$314.27	
10-24-39 to 6-30-40 inc.	163.10	477.37
		<u></u>

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	14.41		
10-24-39 to 6-30-40 inc. ....	266.21	280.62	757.99

Excess over minimum wages .....		\$	47.30
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Richard Roby:

Hours worked:

10-24-38 to 10-23-39 inc. 1,222.30 hrs.			
@ .25 .....	\$305.58		
10-24-39 to 6-30-40 inc. 1,112.25 hrs.			
@ .30 .....	333.68	\$	639.26

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$389.28		
10-24-39 to 6-30-40 inc. ....	234.26	623.54	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	3.20		
10-24-39 to 6-30-40 inc. ....	103.05	106.25	729.79

Excess over minimum wages .....		\$	90.53
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Charles Sampson:

Hours worked:

10-24-38 to 10-23-39 inc. 1,192.80 hrs.			
@ .25 .....	\$298.20		
10-24-39 to 6-30-40 inc. 618.50 hrs. @			
.30 .....	185.55	\$	483.75

Amount reported as received, from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$284.70	
10-24-39 to 6-30-40 inc. ....	138.84	423.54
	<u>          </u>	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	31.99	
10-24-39 to 6-30-40 inc. ....	47.57	79.56 \$ 503.10
	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 19.35

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

John Wallace:

Hours worked:

10-24-38 to 10-23-39 inc. 1,571.70 hrs.	
@ .25 .....	\$392.93
10-24-39 to 6-30-40 inc. 1,268.83 hrs.	
@ .30 .....	380.65 \$ 773.58
	<u>          </u>

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$451.55	
10-24-39 to 6-30-40 inc. ....	276.45	728.00
	<u>          </u>	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	5.32	
10-24-39 to 6-30-40 inc. ....	104.98	110.30 838.30
	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 64.72

Ezekiel Z. Daniel, Jr.:

Hours worked:

10-24-38 to 10-23-39 inc.	1,386.85 hrs.		
@ .25			\$346.71
10-24-39 to 6-30-40 inc.	1,079.50 hrs.		
@ .30		323.85	\$ 670.56

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$331.35	
10-24-39 to 6-30-40 inc.	195.62	526.97

Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc.	33.74		
10-24-39 to 6-30-40 inc.	128.27	162.01	688.98

Excess over minimum wages ..... \$ 18.42

Frank Parker:

Hours worked:

10-24-38 to 10-23-39 inc.	1,005.25 hrs.		
@ .25			\$251.31
10-24-39 to 6-30-40 inc.	803.00 hrs.		
@ .30		240.90	\$ 492.21

Amount reported as received from passengers:

10-24-38 to 10-23-39 inc.	\$216.58	
10-24-39 to 6-30-40 inc.	169.60	386.18

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	41.05		
10-24-39 to 6-30-40 inc. ....	71.35	112.40	498.58

Excess over minimum wages .....	\$	6.37
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Sam Jones:

Hours worked:

10-24-38 to 10-23-39 inc. 1,630.46 hrs.		
@ .25 .....	\$407.62	
10-24-39 to 6-30-40 inc. 1,329.51 hrs.		
@ .30 .....	398.85	\$ 806.47

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$398.35	
10-24-39 to 6-30-40 inc. ....	304.55	702.90

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	30.37	
10-24-39 to 6-30-40 inc. ....	95.95	126.32 829.22

Excess over minimum wages .....	\$	22.75
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Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

Edwin A. Thomas:

Hours worked:

10-24-38 to 10-23-39 inc.	1,203.65 hrs.	
@ .25 .....		\$300.91
10-24-39 to 6-30-40 inc.	1,134.00 hrs.	
@ .30 .....		340.20 \$ 641.11

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$410.43	
10-24-39 to 6-30-40 inc. ....	218.59	629.02

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	5.54	
10-24-39 to 6-30-40 inc. ....	121.64	127.18 756.20

Excess over minimum wages ..... \$ 115.09

Note: Amounts due under guarantee to insure minimum  
wages are computed and paid semi-monthly.

Edward Kittles:

Hours worked:

10-24-38 to 10-23-39 inc.	2,189.97 Hrs.	
@ .25 .....		\$547.49
10-24-39 to 6-30-40 inc.	1,304.24 Hrs.	
@ .30 .....		391.27 \$ 938.76

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$486.67	
10-24-39 to 6-30-40 inc. ....	260.48	747.15

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	55.40		
10-24-39 to 6-30-40 inc. ....	.71		
October, 1940 .....	167.06	223.17	970.32

Excess over minimum wages ..... \$ 31.56.

Henry Folson:

Hours worked:

10-24-38 to 7-31-39 inc. 1,950.20 Hrs.		
@ .25 .....	\$487.55	
8-1-39 to 10-23-39 inc. 441.59 Hrs. @		
.25 .....	110.40	
10-24-39 to 6-30-40 inc. 1,597.83 Hrs.		
@ .30 .....	479.35	\$1,077.30

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$499.86	
10-24-39 to 6-30-40 inc. ....	276.02	775.88

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	58.80		
10-24-39 to 6-30-40 inc. ....	203.38		
October, 1940 .....	54.74	316.92	1,092.80

Excess over minimum wages ..... \$ 15.50

## \* Fleming Williams, Jr.:

## Hours worked:

10-24-38 to 7-31-39 inc. 1,885.30 Hrs.		
@ .25 .....	\$471.33	
- 8-1-39 to 10-23-39 inc., None @ .25 .....		
10-24-39 to 6-30-40 inc., None @ .30 .....	\$ 471.33	

## Amount reported as received from passengers:

10-24-38 to 10-23-39 inc. ....	\$388.64	
10-24-39 to 6-30-40 inc. ....	None	388.64

## Amount paid by Jacksonville Terminal Company:

10-24-38 to 10-23-39 inc. ....	\$ 45.00		
10-24-39 to 6-30-40 inc. ....	None		
October, 1940 .....	45.25	90.25	478.89

Excess over minimum wages .....	\$	7.56
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Noe: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

## \* Henry Perry:

## Hours worked:

10-24-38 to 10-23-39 inc. 2,421.32 Hrs.		
@ .25 .....	\$605.33	
10-24-39 to 6-30-40 inc. 1,433.84 Hrs.		
@ .30 .....	430.15	\$1,035.48

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$624.92	
10-24-39 to 6-30-40 inc. ....	251.53	876.45
	<u>          </u>	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	37.88	
10-24-39 to 6-30-40 inc. ....	77.20	
October, 1940 .....	114.10	229.18 1,105.63
	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 70.15

Charles L. Williams:

Hours worked:

10-24-38 to 7-31-39 inc. 1,979.20 Hrs.	
@ .25 .....	\$494.80
8-1-39 to 10-23-39 inc. 458.08 Hrs. @ .25	114.52
10-24-39 to 6-30-40 inc. 1,691.83 Hrs.	
@ .30 .....	507.55 \$1,116.87
	<u>          </u>

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$576.27	
10-24-39 to 6-30-40 inc. ....	323.62	899.89
	<u>          </u>	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	55.00	
10-24-39 to 6-30-40 inc. ....	183.98	
October, 1940 .....	26.69	265.67 1,165.56
	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 48.69

John W. Speights:

Hours worked:

10-24-38 to 7-31-39 inc. 1,671.35 Hrs.			
@ .25 .....	\$417.84		
8-1-39 to 10-23-39 inc. 255.18 Hrs. @ .25	63.80		
10-24-39 to 6-30-40 inc. 1,245.25 Hrs.			
@ .30 .....	372.68	\$	854.32

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$380.07		
10-24-39 to 6-30-40 inc. ....	252.67	632.74	

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	40.00		
10-24-39 to 6-30-40 inc. ....	2.31		
October, 1940 .....	191.66	233.97	866.71

Excess over minimum wages ..... \$ 12.39

Note: Amounts due under guarantee to insure minimum  
wages are computed and paid semi-monthly.

Clarence Davis:

Hours worked:

10-24-38 to 7-31-39 inc. 1,807.45 Hrs.			
@ .25 .....	\$451.86		
8-1-39 to 10-23-39 inc. 417.55 Hrs. @ .25	104.39		
10-24-39 to 6-30-40 inc. 1,371.42 Hrs.			
@ .30 .....	411.43	\$	967.68

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$511.49		
10-24-39 to 6-30-40 inc. ....	247.18	758.67	
	<u>          </u>		

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	55.14		
10-24-39 to 6-30-40 inc. ....	164.28		
October, 1940 .....	14.60	234.02	992.69
	<u>          </u>	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 25.01

Charles Brooks:

Hours worked:

10-24-38 to 10-23-39 inc. 2,455.05 Hrs.		
@ .25 .....	\$613.76	
10-24-39 to 6-30-40 inc. 1,513.34 Hrs.		
@ .30 .....	454.00	\$1,067.76
	<u>          </u>	<u>          </u>

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$649.77	
10-24-39 to 6-30-40 inc. ....	331.71	981.48
	<u>          </u>	<u>          </u>

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	19.08		
10-24-39 to 6-30-40 inc. ....	None		
October, 1940 .....	144.16	163.24	1,144.72
	<u>          </u>	<u>          </u>	<u>          </u>

Excess over minimum wages ..... \$ 76.96

Silas W. Owens:

Hours worked:

10-24-38 to 7-31-39 inc. 1,286.10 Hrs.		
@ .25 .....	\$321.53	
8-1-39 to 10-23-39 inc. 118.10 Hrs. @ .25	29.53	
10-24-39 to 6-30-40 inc. 105.75 Hrs. @		
.30 .....	31.73	\$ 382.79

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$182.96	
10-24-39 to 6-30-40 inc. ....	14.67	197.63

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	20.45		
10-24-39 to 6-30-40 inc. ....	.20		
October, 1940 .....	166.61	187.26	384.89

Excess over minimum wages ..... \$ 2.10

Note: Amounts due under guarantee to insure minimum  
wages are computed and paid semi-monthly:

Vandy Blake:

Hours worked:

10-24-38 to 7-31-39 inc. 1,569.60 Hrs.		
@ .25 .....	\$392.40	
8-1-39 to 10-23-39 inc. 349.88 Hrs. @ .25	87.47	
10-24-39 to 6-30-40 inc. 1013.17 Hrs.		
@ .30 .....	303.95	\$ 783.82

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$407.72	
10-24-39 to 6-30-40 inc. ....	169.30	577.02

---

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	50.00	
10-24-39 to 6-30-40 inc. ....	134.68	
October, 1940 .....	43.44	228.12 805.14

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Excess over minimum wages ..... \$ 21.32

Andrew Lang:

Hours worked:

10-24-38 to 7-31-39 inc. 1,971.10 Hrs.		
@ .25 .....	\$492.78	
8-1-39 to 10-23-39 inc. 463.75 Hrs. @ .25	115.94	
10-24-39 to 6-30-40 inc. 1,473.84 Hrs.		
@ .30 .....	442.15	\$1,050.87

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Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$503.63	
10-24-39 to 6-30-40 inc. ....	198.33	701.96

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Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	50.00	
10-24-39 to 6-30-40 inc. ....	133.34	
October, 1940 .....	176.33	359.67 1,061.63

---

Excess over minimum wages ..... \$ 10.76

William Petty:

Hours worked:

10-24-38 to 7-31-39 inc. 1,802.40 Hrs.		
@ .25 .....	\$450.60	
8-1-39 to 10-23-39 inc. 385.42 Hrs. @ .25	96.36	
10-24-39 to 6-30-40 inc. 1,423.09 Hrs.		
@ .30 .....	426.93	\$ 973.89

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$525.04	
10-24-39 to 6-30-40 inc. ....	322.36	847.40

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	57.17	
10-24-39 to 6-30-40 inc. ....	104.59	
October, 1940 .....	11.03	172.79 1,020.19

Excess over minimum wages ..... \$ 46.30

Note: Amounts due under guarantee to insure minimum  
wages are computed and paid semi-monthly.

Willie A. Anderson:

Hours worked:

10-24-38 to 10-23-39 inc. 1,405.25 Hrs.		
@ .25 .....	\$351.31	
10-24-39 to 6-30-40 inc. 1,226.25 Hrs.		
@ .30 .....	367.88	\$ 719.19

Amount reported as received from  
passengers:

10-24-38 to 10-23-39 inc. ....	\$426.65	
10-24-39 to 6-30-40 inc. ....	308.80	735.45

---

Amount paid by Jacksonville Terminal  
Company:

10-24-38 to 10-23-39 inc. ....	3.33		
10-24-39 to 6-30-40 inc. ....	.65		
October, 1940 .....	61.28	65.26	800.71

---

Excess over minimum wages ..... \$ 81.52

Note: Amounts due under guarantee to insure minimum wages are computed and paid semi-monthly.

29 MOTION FOR SUMMARY JUDGMENT AND  
NOTICE OF MOTION.

Comes now the Defendant and moves for a judgment in favor of Jacksonville Terminal Company, Defendant, and as a part of said Motion attaches the Affidavit of John L. Wilkes.

This Motion is made under Rule 56 of the Federal Rules of Civil Procedure.

Dated this 16th day of September, A. D. 1940.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant,  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

To: Frank F. L'Engle, Esq., Attorney for Plaintiffs,  
525 Barnett Bank Bldg., Jacksonville, Florida.

Please take notice, that the undersigned will bring the above Motion on for hearing before this Court, at its rooms in the United States Court and Post Office Building, Jacksonville, Florida, on the 27th day of September, A. D. 1940, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Dated this 16th day of September, A. D. 1940.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant,  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

Received a copy of the above Motion and Notice this  
16th day of September, A. D. 1940.

CAROL L. COLEMAN for

FRANK F. L'ENGLE,

Attorney for C. L. Williams,  
Individually, et al.

525 Barnett National Bank Bldg.,  
Jacksonville, Florida.

30

# AFFIDAVIT.

State of Florida,  
County of Duval, ss.

Before me, a Notary Public in and for said State and County, personally appeared John L. Wilkes, to me well known, who being by me first duly sworn deposes and

says: I am President and General Manager of Jacksonville Terminal Company; I am now and was in actual and personal control and direction of the operations of that company during the period covered by the suit of C. L. Williams, et al, vs. Jacksonville Terminal Company, now pending; that I had charge of the books and accounts of the Company during that period; that I am familiar with the operations of the Company and with the work performed by the red caps and the manner in which it was performed; that I have read the Answer and the Bill of Particulars which was filed with the Answer and that the matters set forth in the Answer and particularly in paragraphs 3, 4, 6, 7, 8, 9, 10 and 11 are true and that the Notice set forth in paragraph 8 of the Answer was given to each of the Plaintiffs on or before October 24th, 1938, and that the reports of amounts received from passengers as set forth in the Bill of Particulars were made by each of the Plaintiffs as therein prescribed, and that the amounts therein set forth as paid by the Jacksonville Terminal Company were so paid and that the said Bill of Particulars was made up by the Accounting Department of the Jacksonville Terminal Company under my personal supervision and direction and that the said Bill of Particulars is true in substance and in fact and detail as therein set forth, and that the statement of the number of hours worked by each of the Plaintiffs is true and correct and that payment was made to each of the plaintiffs in the amounts and in the manner as set forth in the Answer and in the Bill of Particulars.

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JOHN L. WILKES.

(Notarial Seal)

Sworn to and subscribed before me this 16th day of September, A. D. 1940.

J. N. MOORE,

Notary Public State of Florida  
at Large.

My Commission Expires Nov. 24, 1941.

## STIPULATION.

It Is Hereby Stipulated And Agreed, by and between counsel for the respective parties, as follows:

32 1. That the defendant is engaged in Interstate Commerce defined under the "Fair Labor Standards Act of 1938", 29 U. S. C. A. 201 to 219 (June 25, 1938, c. 676, paragraph 1, 52 Stat. 1060).

2. That C. L. Williams, and each and every the other plaintiffs named in the complaint filed in this cause, were employees of Jacksonville Terminal Company, a corporation, defendant, from July 10, 1937, to and including the date of filing the complaint on file herein, as defined by the "Fair Labor Standards Act, 1938", 29 U. S. C. A. 201 to 219 (June 25, 1938, c. 676 paragraph 1, 52 Stat. 1060).

3. That C. L. Williams and each and every the other plaintiffs named in the complaint filed in this cause, while so employed by the defendant were engaged in Interstate Commerce as defined by the "Fair Labor Standards Act, 1938", 29 U. S. C. A. 201 to 219 (June 25, 1938, c. 676, paragraph 1, 52 Stat. 1060).

4. That the Bill of Particulars attached to the Answer correctly shows, for the period October 24, 1938 to October 23, 1939, inclusive, and for the period October 24, 1939 to June 30, 1940, inclusive:

(a) The number of hours worked by each one of the Plaintiffs.

(b) The amount received by each of the Plaintiffs from passengers.

(c) The amount paid to each of Plaintiffs by Defendant by check drawn against the funds of Defendant.

FRANK F. L'ENGLE,

(Frank F. L'ENGLE)

Attorney for C. L. Williams,  
Individually, et al, plain-  
tiffs.

525 Barnett National Bank Bldg.,  
Jacksonville, Florida.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant,  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

33 MOTION FOR SUMMARY JUDGMENT AND  
NOTICE.

Please take notice that upon the Complaint and Answer and Stipulation of the respective parties by their respective counsel, and the depositions, the undersigned will move this Court, in Chambers in the Federal Building, Jacksonville, Florida, at 10:00 o'clock in the forenoon of the 17th day of October, A. D. 1940, or as soon thereafter as counsel can be heard, for an Order giving Summary Judgment to the plaintiffs, pursuant to Rule 56 of the Federal Rules of Civil Procedure, because the pleadings and depositions and affidavits of plaintiffs show there is no genuine issue as to any material fact and that the cross-movants are

entitled to judgment as a matter of law, and for such other and further relief as the Court may deem just, with costs.

FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for Plaintiffs, C. L.  
Williams, Individually, et  
al.

525 Barnett National Bank Building,  
Jacksonville, Florida.

Received copy of the foregoing Motion and Notice this  
7th day of October, A. D. 1940, and hereby accept service.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant  
Jacksonville Terminal  
Company.

304 Bisbee Building;  
Jacksonville, Florida.

### STIPULATION.

It Is Hereby Stipulated And agreed by and between  
Counsel for the respective parties, this 10th day of Octo-  
ber, A. D. 1940, as follows:

1. That the Bill of Particulars attached to the Answer  
of Defendant and filed September 9th, 1940, be amended  
in the following particulars, otherwise to remain in full  
force and effect; this amendment to be effective as of  
September 9th, 1940: By striking the Recapitula-  
tion and the Bill of Particulars filed September  
9th, 1940, as to the following named individuals,  
but retaining the Bill of Particulars as to each and every

other individual named, and substituting therefor the Recapitulation and Bill of Particulars hereto attached as to each of the following named individuals, to-wit:

Edward Kittles,  
Henry Folson,  
Fleming Williams, Jr.,  
Henry Perry,  
Charles L. Williams,  
John W. Speights,  
Clarence Davis,  
Charles Brooks,  
Silas W. Owens,  
Vandy Blake,  
Andrew Lange,  
William Petty,  
Willie A. Anderson.

2. That the Stipulation previously entered into by and between counsel and filed in this Court October 7th, 1940, extend to and include the amendment to the Bill of Particulars and to the Bill of Particulars as amended, and that the said Stipulation filed October 7th, 1940, remain and continue in full force and effect.

FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for C. L. Williams,  
Individually, et'al, Plaintiffs.

525 Barnett National Bank Building,  
Jacksonville, Florida.

JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant,  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

35 (Depositions and Exhibits before Raleigh Downing, and R. W. Pattison, Notaries Public, and offered in evidence at the hearing on Motions for Summary Judgment of both parties before Curtis L. Waller, United States District Judge at Jacksonville, Florida, October 17th, 1940.)

Appearances:

Frank F. L'Engle, Esquire, and Montague Rosenberg, Esquire, attorneys for plaintiffs.

Julian Hartridge, Esquire, attorney for defendant.

Mr. L'Engle:

Testimony of two additional witnesses, other than the witnesses named in the notice, to-wit, Frank Leggett and C. L. Williams will be taken by consent of counsel at this hearing rather than the necessity of serving an additional notice.

Stipulation:

The defendant admits that the following original and copies of letters and telegrams all of which are here submitted from Mr. Wooten to Mr. Wilkes and from Mr. Wilkes to Mr. Wooten are genuine.

Mr. L'Engle:

Plaintiffs offer in evidence for identification original letter on the letter head of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, signed by L. L. Wooten, General Chairman, dated November 14, 1938, and it is agreed that all copies of letters from Mr. Wooten to Mr. Wilkes are copies of original letters on the same stationery.

The original letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 1.

Mr. L'Engle:

Plaintiffs offer in evidence for identification copy of letter dated October 25, 1938.

36        The said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 1-A.

Mr. L'Engle:

Plaintiffs offer in evidence for identification copy of letter dated November 16, 1938.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 2.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated November 26, 1938.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 3.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated November 30, 1938, to which is attached copy of the proposed agreement noted in the first paragraph of the letter.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 4.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated September 7, 1938.

Said letter referred to was received and filed for identification as Plaintiffs' Exhibit No. 5, for Identification.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated January 13, 1939.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 6.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated February 8, 1939.

37. Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 7.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated February 20, 1939.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 8.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated March 5, 1939.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 9.

Mr. L'Engle:

Plaintiffs offer in evidence copy of telegram dated March 20, 1939.

Said telegram referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 10.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated June 2, 1939, to which is attached copy of letter of May 26, 1939.

Said letters referred to were received and filed for identification as Plaintiffs' Identification Exhibit No. 11.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated May 26, 1939, which is identical with the letter of May 26th attached to letter of June 2, agreement between Jacksonville Terminal Company and Brotherhood of Railway and Steamship Clerks which is signed by J. L. Wilkes president and general manager of Jacksonville Terminal Company and by L. L. Wooten, General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and in the last paragraph thereof provides in part, "This agreement shall be effective June 16, 1939", the above description being for the purpose of identification.

Said letter referred to was received and filed for identification as Plaintiffs' Exhibit No. 12.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated July 8, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 13.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated July 25, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 14.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of August 2, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 15.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of August 7, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 16.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated August 17, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 17.

Mr. L'Engle:

Plaintiffs offer in evidence copy of notice to red caps.

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Said notice referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 18.

Mr. L'Engle:

The letters, telegrams and exhibits beginning with Exhibit No. 19 and ending with Exhibit No. 32 are copies of original letters written by Mr. Wilkes to Mr. Wooten and copies of telegrams sent by Mr. Wilkes to Mr. Wooten and copy of agreement entered into between the defendant Jacksonville Terminal Company and Mr. Wooten of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Station and Express Employees, dated August

9, 1940. Letter from Mr. Wilkes to Mr. Wooten, dated October 27, 1928, No. 19.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 19.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of November 15, 1938.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 20.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated November 16, 1938.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 21.

Mr. L'Engle:

Plaintiffs offer in evidence copy of telegram from Mr. Wilkes to Mr. Wooten dated February 10, 1939.

Said telegram referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 22.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated February 21, 1939.

40. Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 23.

Mr. L'Engle:

Plaintiffs offer in evidence copy of telegram dated March 20th, 1939.

Said telegram referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 24.

Mr. L'Engle:

Plaintiffs offer in evidence copy of telegrams dated June 3, 1939.

Said telegrams referred to were received and filed for identification as Plaintiffs' Identification Exhibits Nos. 25 and 26.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of July 2, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Exhibit No. 27, for Identification.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of July 24, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Exhibit No. 28, for Identification.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter of August 7, 1940.

Said letter referred to was received and filed or identification as Plaintiffs' Identification Exhibit No. 29.

Mr. L'Engle:

Plaintiffs offer in evidence agreement of August 9, 1940.

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Said agreement referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 30.

Mr. L'Engle:

Plaintiffs offer in evidence copy of letter dated August 14, 1940.

Said letter referred to was received and filed for identification as Plaintiffs' Identification Exhibit No. 31.

Mr. L'Engle:

Mr. Hartridge, I understand now that we have before the Examiner certain letters, telegrams and copies of certain agreements and notices, the genuineness of which is admitted, I understand, by each of the parties, that is, the actual sending and receipt by the receiver is admitted?

These letters are now offered in evidence by plaintiffs as Plaintiffs' Exhibit Nos. 1 to 31.

Mr. Hartridge:

The defendant reserves the right to make such objections that he may object to any or all of the correspondence at the time of the hearing or at the time of any subsequent proceedings in this cause.

Mr. L'Engle:

To which reservation the plaintiffs object on the following grounds:

(1) That this is a hearing under the Federal rules after notice and any objections to the introduction of the letters should come at this time to enable the plaintiffs to meet such objections if the same are objectionable.

Mr. Hartridge:

The defendant objects to the introduction of each and all, not waiving any additional objections or motion it

42 may have on additional grounds on the ground that the same are incompetent, immaterial and irrelevant and reserves the right to make objections specifically at the time.

The letters, telegrams, and agreements referred to and identified were received and filed in evidence and marked Plaintiffs' Exhibit Nos. 1 to 31, both inclusive.

MR. JOHN L. WILKES was produced and sworn as a witness on behalf of the plaintiff and testified as follows:

Direct Examination.

By Mr. L'Engle:

Q. In the answer, Mr. Wilkes, to the complaint on file in this case, there is attached a bill of particulars indicating, among other things that some of the plaintiffs, designated as red caps, were classified by your company as handicapped workers. I will ask you please, if any of those red caps which are identified as handicapped workers have a certificate by the Administrator, or if you, representing your company, or your company, ever made application to the Administrator, which application was joined in by any one of the handicapped workers for certificate under which the law permitted or allowed your company to employ these men so designated as handicapped workers under the wage minimum constituting the Fair Labor Standards Act of 1938.

A. The answer to the question is no. I would like to qualify that answer.

Q. You may answer the question, Mr. Wilkes. You may make any answer you wish to the question.

A. The answer is no. The arrangement under which the handicapped workers were rated were worked  
43 out as a matter of agreement between representatives of the red caps, Frank Leggett and myself

in conference. It was not the result of any arrangement at Washington.

Q. At or about what time, Mr. Wilkes, was this arrangement made, this arrangement you speak of made?

A. I could not answer that question, exactly, but it was made not a great time after the accident went into effect. I know it was sometime during the time that negotiations were with the red-caps under assigned hours for the purpose of the men working during our arrangements with them. I would have to refer to my file, which I don't have with me, to be exact on the date. I know that Frank Leggett told me whatever arrangement we worked out would be satisfactory.

Q. Did you for your company or your company ever receive any certificate from the Administrator as to the handicapped workers about putting them to work under a handicap by physical disability or disability that might impair their working ability with the others engaged by your company in the same kind and class of employment?

A. Red caps, no.

Q. What wage scale and rate of pay was your company paying these plaintiffs between the date of July 1, 1940, and August 15, 1940?

A. Thirty cents per hour minimum for red caps.

Q. The exhibit filed before the Examiner today, and being Exhibit No. 13, which is an agreement to become effective as of the 16th day of June, 1939, did these plaintiffs work for your company under the terms of that agreement?

A. Yes.

Q. How long were the terms of that agreement in force between your company and these plaintiffs?

A. Until about July 1, 1940.

44 Q. An agreement filed before the Examiner as Exhibit ..... dated August 9, 1940; these men worked for your company under the terms of that agreement, did they?

A. Yes, all the red caps worked under the terms of that agreement and supplemental agreements, and the agreements became effective July 1, 1940.

Q. Then the agreement of June 16, 1939, and the agreement of August 9, 1940, are the only two agreements your company has had with these men since the effective date of the Wage and Hour Law?

A. That is correct. Both are in effect at the present time.

Q. Is it not a fact that subsequent to the future negotiations that you had with Mr. Wooten that your company has recognized Mr. Wooten as the bargaining agent for the red caps at your Terminal Company?

Mr. Hartridge:

You understand I am reserving the right to object to all this, the same reservation throughout the entire examination.

Mr. Wilkes, you are not obliged to answer any question categorically. You can say who Mr. Wooten was and state the facts with regard to your relations with him. You are not obliged to draw any conclusions.

Mr. L'Engle: (Addressing the Reporter):

Mr. Examiner, will you read the question to me?

(The question was read to counsel).

A. Mr. Wooten has done all the bargaining and consulting with me in regard to red caps, although I have not at all times agreed with his conclusions. Mr. Wooten has come to see me in regard to the red caps. He  
45 stated he had the entire authority of each red cap to represent him, and then later he stated that under the law they had a right to be represented by a representative of their own choice or an organization of

their choice, and we signed the agreement which the Brotherhood of Railway Clerks represented the red caps that was signed by Mr. Wooten for that organization and by myself for the Jacksonville Terminal Company.

Q. And this agreement, this one of the effective date of June 16, 1939, and the one dated August 9, 1940, were signed by Mr. Wooten as chairman of the Brotherhood of Railway and Steamship Clerks organization?

A. That is right.

Q. And they are still working under that agreement?

A. Yes, sir.

Q. Your negotiations in regard to the working agreements or any working agreement or wage scale as far as the red caps are concerned have been with Mr. Wooten?

A. With one exception, we worked out with the local committee, Frank Leggett, worked out with me negotiations on behalf of the red caps that were disabled.

Q. Subsequent to that negotiation you are speaking of, did Mr. Wooten also discuss with you the matter of the handicapped workers?

A. I am inclined to think he did. At any rate I know we talked about the arrangement we had made in regard to such handicapped workers. I think Mr. Wooten and I discussed that.

Q. On July 2nd, 1940, you wrote Mr. Wooten a letter concerning some of the handicapped workers, did you not?

A. Yes, but your preceding question said immediately subsequent to the arrangement that we originally  
46 made through negotiations with Frank Leggett. The letter of July 2, 1940, is very much subsequent to that.

Q. But you did have correspondence with Mr. Wooten concerning certain handicapped workers of July 2, 1940?

A. Yes.

Q. Do you remember whether or not you had any conversation with Mr. Wooten in between the time you had

this alleged conference with Frank Leggett and this letter of July 2, 1940?

A. I am quite sure we did. I don't remember the date of the occasion, but I am quite sure we did have conversation.

Q. Mr. Wilkes, prior to this meeting of the committee that you have described to us, in reference to handicapped workers, had you any knowledge of the Fair Labor Standards Act?

A. Yes, I think so.

Q. Did you know of the provision in the Fair Labor Standards Act in reference to obtaining certificates from the Administrator in regard to working handicapped workers?

A. Yes, I did.

Q. Did you know the provision in that act or any rule of the Administration under his authority in the act, that application for working handicapped men had to be made on a form furnished by the Administrator?

A. I did find out later that that was rather a rigid rule and requirement. My impression prior to that was where we reached an understanding with the representatives of the men it was not necessary to go through that red tape. I found out afterwards, however, that it was more or less a strenuous requirement.

47 Q. The law was not changed at any time from the time you made your first examination or became acquainted with it up to the time of the first conference you had with Frank Leggett in regard to these handicapped workers?

A. Not to my knowledge. I am not a lawyer. I don't think it was.

Q. Mr. Wilkes, your company was paying these men under a plan designated commonly as the Guarantee and Accounting System from the effective date of this act to July 1, 1940, is that true?

A. That is correct.

Q. Now, will you give us a short statement as to what that accounting and guarantee system means?

A. An accounting and guarantee system under which we were operating prior to July 1, 1940, is very clearly described in our answer as well as in the notice which I have put out to the red caps. It simply means this: That the men would keep a record of the amount of money which they received.

Q. From what source?

A. That they received from passengers or others by whom they were employed to carry baggage and so forth, and the numbers of hours they worked—I am speaking of my own company now.

Q. That is all we are interested in.

A. And that was inscribed in the handwriting of the red cap himself on a daily time card which was turned into the management with both the amounts and the hours and signed by the red cap. The management then entered on its daily time card on its payroll, and for each  
48' pay period, which approximates twice a month, if the total earnings of the red caps as an employee

by passengers and others did not average the minimum requirement under the wages and hours act then our company guaranteed and made up the difference until each received the minimum.

Q. During the whole period of time, that is from the effective date of the act up to July 1, 1940, these men were engaged in the same class of work they had been doing for the company for the prior ten or more or years?

A. Generally speaking, yes.

Q. Would the same question apply to July 1, 1940? To the date of the filing of this suit?

A. No, not exactly, because on July 1, 1940, we changed the practice of putting each red cap on the payroll at the minimum requirement of the Wages and Hours Act, which at that time was thirty cents an hour for the numbers of hours which he worked a day. We then required

him to put checks on the individual pieces of baggage, luggage and so forth which he handled, but the red caps turned those funds into the company. That is to say, accounted for them. The rate for this service was ten cents per parcel or bag or piece.

Q. Then, we can assume that the only additional requirement or work or labor that these plaintiffs were performing subsequent to July 1, 1940, over any previous employment was the attaching of tags to the various articles of luggage carried or used by the passenger, and collecting from the passenger the sum of ten cents for each parcel of luggage carried or handled?

A. That is correct.

Q. They were performing the same kind of work in general that red caps had engaged in for years with this same company, with this slight addition?

A. Yes. Of course, subsequent to August 9, 49 we entered into a supplemental agreement which we called the bonus system. Under that system we turned over to the red caps nine cents and retained one cent and still guarantee that they will receive the minimum under that set up.

Q. And they are still doing the same class of work under that set up?

A. That is correct.

Q. Under the system used from the effective date of the act up to July 1st, 1940, did the red caps turn over to you any money, any funds?

A. No, they kept all the money received.

Q. All the money they received from the passengers from whom they were engaged in assisting as red caps, was retained by them and not turned over to you or your company, that is, up to July 1, 1940?

A. That is correct.

Q. The effective date of this accounting and guarantee system was under this notice that has been filed in evidence October 24, 1938?

A. Yes.

Q. That manner of compensation was in existence August 17, 1939; was it not, that being the date of a settlement made by your company with the men?

A. Yes.

Q. I hand you a carbon copy or typewritten paper identified as receipt for back wages due under the Fair Labor Standards Act and ask you whether or not you remember anything concerning certain receipts that might have been signed by any of the employees at or about the date of August 17, 1939?

A. The receipt which is mentioned in this  
50 question is a receipt which was originated by representatives of the Wages and Hour Department at Washington, who after checking our records sometime subsequent to August 15, 1939, decided to get a receipt from each individual red cap, to ascertain whether or not he had received the money which our payrolls indicated we had paid him in back pay. The Jacksonville Terminal Company did not get these receipts or ask for them from the red caps. It was an economic suggestion to check up on our payments to the red caps.

Q. You do remember this form of the receipts?

A. I saw some of them afterwards. I did not until afterwards.

Mr. L'Engle:

I would like to mark this for identification as Exhibit A.

The paper was marked "A", for identification for the Plaintiffs.

Q. Had there been any settlement or any sums of money that might or might not have been due the red caps under this accounting and guarantee system prior to the time of the dates mentioned in this receipt that has

been offered for identification? Or in other words, is this the first settlement that was made by the Company to the red caps?

A. That is the only settlement that was made so far as I now recall, and that began back in July, well back in July.

Q. Negotiations for such settlement?

A. No, the settlement was voluntary on the part of the Terminal Company, because the question has been raised with reference to the way in which we kept the hours that had been worked by these red caps. In that, each red

cap had a separate time card upon which he wrote  
51 down the time consumed in each job, and that was effective October 24, 1938. At the end of the day,

we totalled up the time which the red caps said he had worked and figured his minimum earnings of so much an hour or for what he said he had received for his services from passengers. Later on we felt that that method of keeping the time probably was not equitable and that we should take into consideration the time that the men were hanging around the station between jobs waiting for work, also as the proper medium for the rate per hour.

Q. Do you remember when you arrived at that conclusion?

A. I would say it was somewhere around July 1st, 1939, because it was a tremendous undertaking to go back and work up all those cards and get the back pay that was due them under this new set up. Then, we also had a settlement with the men through this Frank Leggett as to what the assigned hours with which the base of pay from the hours actually worked to the assigned hours; the assigned hours were longer than the actual working hours.

Q. But still under the accounting and guarantee system?

A. Oh, yes.

Q. Do you remember or can you remember or have you any records with which to refresh your recollection as to what time you arrived at the question in your mind as to whether the first arrangement was equitable and should be changed. When the first arrangement was inequitable and should be changed?

A. That refers to the arrangement of working hours?

Q. Yes. In hours hanging around the station.

A. As a matter of fact, over a period of six or eight months the matter was under consideration. There was a difference of opinion as to the method.

52 Q. Can you tell us what time you actually started the investigation of your records to make a determination as to the actual settlement that should be made to these men? I might suggest for your consideration the statement you have just made about Frank Leggett making some negotiations or working with you in ascertaining the number of assigned hours, if you understand what I am trying to arrive at.

A. I would say the actual work and negotiations with Frank Leggett must have been somewhere around the latter part of July. My recollection is it took two or three weeks to work the whole thing up.

Q. Would we be safe in assuming that that work started sometime after July, 1939?

A. Yes, sir.

Q. Mr. Wilkes, in one of the exhibits, the letter dated November 30, 1938, there is a reference in that letter of an agreement supposed to have been attached to that letter. I hand you for your examination the form of agreement and ask if you can you state whether or not such an agreement was attached to that letter? I call your attention to the fact that exclusive of the change in numbers of paragraphs the agreement handed you now is identical to the agreement in evidence as being the agreement effective as of June 16, 1939, the difference between the two being paragraph nine in each of the instances.

Mr. Hartridge:

Do you mean to hand him the letter of July too?

Mr. L'Engle:

No, not the letter, but just the agreement.

A. That is generally correct. I previously testified in regard to the November 30 letter that there was a memorandum of the proposed agreement of the eight items attached thereto in regard to the general pay of the red caps, proposed pay of the red caps. With the exception of rule nine, the proposed agreement attached to the letter of November 30, which you have just referred to, was reached in general compromise in an agreement effective June 16, 1939. The eight items mentioned above in the memorandum were never agreed to. The form of the agreement submitted for my examination may have been attached to the letter of that date when it was sent to me. I think probably it was.

Mr. L'Engle:

Now, the plaintiffs offer the exhibit just identified by Mr. Wilkes in the preceding question as Exhibit No. 32.

Said exhibit referred to was received and filed in evidence and marked as Plaintiffs' Exhibit No. 32.

Thereupon the hearing was recessed to be resumed at ten o'clock a. m. the following day, Tuesday, October 8, 1940.

Pursuant to adjournment the further taking of depositions in this cause was resumed at 10:20 o'clock a. m. Tuesday, October 8, 1940; the same parties were present as attended the last preceding hearing and the following further proceedings were had:

JOHN L. WILKES, the witness, being recalled further testified on behalf of the plaintiff as follows:

Direct Examination.

By Mr. L'Engle:

Q. Mr. Wilkes, do you know whether or not your company ever paid any tax under the terms of the Railroad Retirement Act, of 2 3/4% and 3% to January 1, 1940, and 3% subsequent to that time, on the amounts of money reported by the red caps as being received from the passengers?

A. No.

Q. Will you please tell us whether or not your company ever paid any tax on the other employees under this Railroad Retirement Act, the same class of taxes and percentages?

A. Yes.

Q. May I interpret that answer to mean that your company paid the percentage mentioned in the other question of 2 3/4% and 3% on the amount of money actually paid the red caps by your company?

A. Yes.

Mr. L'Engle:

That is all.

Mr. Hartridge:

I have no questions.

(Witness excused.)

55 L. L. WOOTEN, a witness upon behalf of the plaintiff, having been first duly sworn, deposes and says:

Direct Examination.

By Mr. L'Engle:

Q. State your name and residence, Mr. Wooten.

A. L. L. Wooten, Wilmington, North Carolina.

Q. What is your present occupation, sir?

A. General Chairman, representing the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, on the Atlantic Coast Line Railroad; the Jacksonville Terminal Company; the Albany Passenger Terminal Company, the Savannah Union Station, and the Charleston Union Station.

Q. I understand this organization to be a union of employees of the railroads working under the Atlantic Coast Line Railroad Company?

A. It is an international organization, composed of employees in the clerical and station and storeroom classes.

Q. Does that organization have the authority, or were they appointed by the red caps, or the plaintiffs in this case, the red caps employed by the Jacksonville Terminal Company, to negotiate contracts and wage agreements for them with the Jacksonville Terminal Company?

A. It was.

Q. At or about what time?

A. About November 3rd, was when the official  
56 authorizations were turned over to me.

Q. What year?

A. 1938.

Q. There have been turned over to the Examiner several letters addressed to you, L. L. Wooten, General Chairman, from J. L. Wilkes, President and General Manager; and from L. L. Wooten, General Chairman, to J. L. Wilkes, President and General Manager, which let-

ters I am exhibiting to you. I ask you are you the same L. L. Wooten mentioned in that correspondence (handing papers to the witness)?

A. I am, and these letters from me to Mr. Wilkes bear my signatures.

Q. On or about the 24th or 25th of October, 1938, there was a notice posted upon the bulletin board of the Jacksonville Terminal Company, setting out a plan of payment by the Terminal Company to the red caps, and which has been identified as the Accounting and Guarantee System. When is the first time that you had personal knowledge of such notice posted by the Terminal Company?

A. I believe there was something mentioned, and I might have seen that notice on November 4, 1938.

Q. Now, from that day to and including the first day of July, 1940, did you correspond and negotiate in your representative capacity for the red caps with the Jacksonville Terminal Company with reference to any working agreements or wage agreement between this employer and these employees; that is, the Terminal Company and the red caps?

A. Yes, sir.

57 Q. During that period of time, was there any agreement entered into by the red caps with the Terminal Company whereby the red caps agreed to accept this system of pay outlined as identified by that last question?

A. No, sir.

Q. Please tell us whether or not there were any negotiations made by you during that period of time in reference to the amounts of money that should be paid the red caps under the Fair Labor Standards Act.

A. Yes. There negotiations started at a conference with Mr. Wilkes on Friday, November 4, 1938; and continued, so far as I am concerned, until an agreement was made with Mr. Wilkes on August 7, 1940, and written up

by me a few days later, to become effective August 1, 1940.

Q. Now, prior to that time, was there any agreement entered into by you, representing the red caps, and Mr. Wilkes along in June, 1939?

A. There was an agreement entered into pertaining to working conditions. However, because of certain things existing at that time, we struck out a proposed rule covering the wages.

Q. Now, that agreement of June 16, 1939, was that any different from any proposed agreement that you had suggested to Mr. Wilkes, representing the Terminal Company, during the later part of November, 1938?

A. Yes, sir. It struck out a rule pertaining to wages.

Q. Then, I understand the first proposed contract submitted by you was to Mr. Wilkes in November, 1938, which contained a clause concerning the payment of wages under the Fair Labor Standards Act, that agreement being in evidence as Exhibit No. 32; which I now hand to you for examination and ask you to refer to paragraph 9? (Handing paper to the witness).

A. Yes. This paragraph 9 was submitted very shortly after our conference in November, and I think about the last of November, and it was under consideration from then until the date of the conference, which was in June, 1939, at which time we agreed on the other rule submitted, except that rule pertaining rates of pay.

Q. And what paragraph is that just mentioned?

A. Carried as rule No. 9 in the proposed submitted agreement.

Q. There was some other slight change?

A. Some slight changes.

Q. Can you tell us what they were? I mean in a general way, without going into detail about them.

A. I think that in the original proposal, there was a question about furnishing uniforms, etc., which later we took out of the final signed agreement.

Q. But the fundamental difference was paragraph 9, in both instruments?

A. Yes, sir.

Q. That is, the instruments submitted in the latter part of November, 1938 and the agreement actually signed, to be effective as of June 16, 1939?

A. Yes, sir.

Q. After this agreement was signed, did you have any understanding, or was there any agreement between you and Mr. Wilkes, representing the Terminal Company, as to what would then happen in regard to the payment of wages under the Fair Labor Standards Act?

A. May I answer that question by stating that at the time the working hours agreement was signed, we had written up the proposed agreement submitted in November, 1938; and submitted that to the Board of

59 Mediation, which carried the wage clause. When

I met Mr. Wilkes in June, 1939, I told him, and I believe I said so in a letter to him just prior to that date, that we would withdraw the case from mediation and sign the working agreement, and wait on the decision or order of the Federal Wage and Hour Administrator as to the question of wages, as there had been ~~at~~ a hearing in Washington on this entire question of whether or not tips could be accounted, as any part of wages.

Q. Did that hearing that you have just mentioned ever take place?

A. Yes, sir.

Q. I hand you herewith a paper upon the first page of which is the certificate of one Gustav Peck, purporting to be a true copy of the findings and recommendations of the presiding officer, dated September 28, 1939, in the matter of a hearing under the Fair Labor Standards Act of 1938 in regard to Red Caps or hand baggage porters; and I ask you whether or not you are familiar with this order and the proceedings under which these recommendations were made? (Handing paper to the witness)?

A. Yes, sir.

Q. Are those the findings on the hearing that you just mentioned in your previous testimony?

A. Yes; a copy was furnished to me as the findings resulting from the hearing I have just mentioned.

Mr. L'Engle:

The plaintiffs offer in evidence the certificate and the mimeographed copy of the findings, consisting of 18 pages, and the page of the certificate. ✓

Mr. Hartridge:

The defendant objects to the introduction on the general ground that the document is incompetent, irrelevant, and immaterial; and reserves the right, which is provided by the rules of the Federal procedure, to object to the introduction of the document in evidence, and at that time to interpose more specific objections to its introduction.

60 Mr. L'Engle:

Mr. Hartridge, I understand the first word was, "incompetent". Do I understand that you object, or that that objection would be used as to the authenticity.

Mr. Hartridge:

There is no objection being made as to the document being a copy of what it purports to be.

Said certificate and the mimeographed copy of said findings being received and filed in evidence as Plaintiffs' Exhibit No. 33, and being hereunto attached.

Q. At or about the time that this agreement was entered into between you and Mr. Wilkes, was there any federal case pending, to your knowledge, involving this same question of the Fair Labor Standards Act applying to Red Caps, in reference to their compensation, and

whether or not a guarantee and accounting system was a proper manner in which to pay the Red Caps under the Fair Labor Standards Act?

A. There were some places in progress, or being prepared and awaiting the decision, or awaiting the order of the Administrator on this particular question.

Q. In your answers, Mr. Wooten, who do you mean to designate by "We"?

A. The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, or its duly accredited representatives.

Q. That applies to the petition that you had filed before the Mediation Board?

A. Yes, sir.

Q. Was there any other act or condition arising in the negotiations between you and Mr. Wilkes as of June 16th, the June 16th agreement, in regard to some decision to be made, other than the Administrator?

A. Not at that particular time. I think we both discussed the matter and both agreed that, regardless  
61 of whatever the Administrator might do, the case might go to Court.

Q. After the Administrator made his ruling, of which we have introduced a copy, did you have any further conferences with Mr. Wilkes in reference to this matter, the wage and hour matter?

A. Yes, sir. We had a number of conversations; and during all of those conversations, I particularly stressed the Dallas, Texas case, which was identical as to set up and operation, as I understand. And there was also a case at Cincinnati, and I believe one at Cleveland; but I did not have the record on the Cincinnati and Cleveland cases, but I was keeping in close touch, and had the records on the Dallas, Texas case, which was being prepared at the time the hearings were held under the instructions of Mr. Andrews.

Q. What was the effect of the Dallas case to be upon the negotiations between you and Mr. Wilkes in regard to this paragraph 9 in the agreement of June 16, 1939?

A. It was my understanding that the Dallas case would decide the questions for us on the Terminal Company.

Q. May I ask you to explain who you mean by "us" in that answer?

A. The employees whom I represent.

Q. Was that the understanding between you and the employees, or did you have that same understanding with Mr. Wilkes as far as the Jacksonville Terminal Company was concerned?

A. Mr. Wilkes, in all of the conversations in connection with it, eventually stated that whatever was done by the Courts, that his company would have to do; and in those conversations, the Dallas, Texas case was always the one stressed.

Q. Now, what explanation can you give us for the reason of the lapse in time of the correspondence between you and Mr. Wilkes from June 16, 1939, when written negotiations ceased, until the early part of July, 1940?

A. On June 8th, 1939, I signed the agreement on working conditions with Mr. Wilkes, to be effective June 16, 1939. Between that date and July 1, 1940, I discussed the question of wages, and what was going to be done, with Mr. Wilkes on the following dates: August 5, 1939, which was on Saturday; September 7, 1939, which was on Thursday; December 16, 1939, which was on Saturday; January 27, 1940, which was on Saturday; May 2, 1940, which was on Thursday; June 15, 1940, which was on Saturday; and again on July 16, 1940; and which was in connection with the wages to be paid after July 1, 1940, and what was to be done about the back wage. And on July 16, 1940, I notified Mr. Wilkes in personal conversation that I had held off action in this case as long as it was possible on the back wages, because the Dallas, Texas case.

had been decided by the Courts, and we understood, and we understood—and when I refer to “we”, I mean the organization, myself representing these employees—that the Dallas, Texas decision would decide our case so far as back wages were concerned.

Q. Is that the reason that the question of wages was left out of the June 16, 1939 agreement, so that it could be put in the agreement in the event of a decision on the matter by the Administrator or by some judicial determination?

A. Yes, sir.

Q. There was not an agreement between you, representing these men, and him that the Guarantee and Accounting System should stand as the manner and amount of wages to be paid these employees?

A. No, sir.

Q. Or that the system in existence at the time, that is, subsequent to June 16, 1939 agreement up to July 1, 1940?

63 A. No, sir. We protested that system and contended that at all times, in letters and personal conferences, that tips had no place as being any part of the wage that the law specified the employer should pay to the employee. And in many of those instances, I cited Mr. Wilkes to the rulings under the N. R. A. with regard to Dining car help, Pullman Porters, Hotel help, and many others, that tips were no part of wages.

Q. Then, I may say that your understanding with Mr. Wilkes was that the matter of wages, was to be left out of the contract until a determination, either by the Administrator or some judicial proceedings?

A. That is correct; and that we would then negotiate or apply whatever that decision might be, because I felt, and I think he did, that that was beyond our control whenever the Court or the Administrator might decide that issue.

Mr. L'Engle:  
That is all.

Cross Examination.

By Mr. Hartridge:

Q. Then there was no agreement reached between you, as chairman of the brotherhood which you have described, and Mr. Wilkes as president of the company, in regard to wages or validity of the Accounting and Guarantee System?

A. There was an agreement made with respect to wages.

Q. There was or was not?

A. There was an agreement made with respect to wages effective August 1, 1940, but no prior agreement..

Q. But there was no prior agreement?

A. In other words, we were in disagreement  
64 and there was a dispute existing under the terms of the amended Railway Act.

Q. I hand you a printed copy of a pamphlet entitled, "Revised Agreement between the Jacksonville Terminal Company and employees herein named represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. Effective February 1, 1937."; and I ask you if that agreement was in effect according to its terms (handing document to the witness)?

A. Yes, sir. And may I say further that the notice served on Mr. Wilkes, along with others, on October 25, 1938, stipulated that we would expect the terms of that working agreement applied to Red Caps until such time as exceptions might be made.

Q. There was no other agreement between the Terminal Company and yourself, as representing the brotherhood, between the period of this agreement and the agreement dated June 16, 1939, was there?

A. Yes, two agreements between those dates.

Q. What agreements were they?

A. Agreements on wages. That agreement does not carry any wage sale in it at all; that is a working agreement that you have just submitted; and between the date of that agreement and the date you have mentioned, July 1, 1940, there were two agreements between our organization and the Jacksonville Terminal Company pertaining to wages of employees covered by that agreement.

Q. Are those agreements among the agreements which have been identified and introduced here?

A. They are not.

Q. Did those agreements relate to Red Caps?

A. They did not.

Q. In any way?

65 A. They did not; but they did relate to the employees covered by that agreement at the time it was made.

Q. After the ruling in Ex Parte-72 was made, was it your contention as chairman of the brotherhood that this agreement effective February 1, 1937 applied to Red Caps?

A. Yes, sir. The date of Ex Parte 72, sub one was September 29, 1938. That Ex Parte was given to me, delivered to me, on October 24, 1938. The Red Caps employed by the Jacksonville Terminal Company had been negotiating with me for approximately two years to become organized and get an agreement or come within the scope of our agreement. The question of whether or not Red Caps were employees under the amended Railway Labor Act was before the Interstate Commerce Commission, and I notified these employees that it would be useless to become organized until the Commission had rendered their decision, but that as soon as that decision was rendered, if it was favorable, we would accept the employees into the organization and make contracts and handle their wages and working conditions as provided by the amended Railway Labor Act. I was in Cincinnati

when the decision or order of the Commission was delivered to me, the following day, and which happened to be the day the Fair Labor Standards Act became effective, and I was on the train between Cincinnati and Richmond, and I wrote a joint letter, which has been submitted; and it is our contention and has been that the agreement you have just presented covered the working conditions and hours of service of the Red Caps from October 25, 1938, until the date of the working agreement, leaving out wages, which was signed, effective June 16, 1939.

Mr. Hartridge:

I offer that pamphlet for identification.

Said pamphlet above referred to being received and filed as defendant's Identification Exhibit "A".

Q. Your letter, which has been identified in this record as Exhibit I-A, is dated October 25, 1938. Is that the letter to which you refer?

A.. Yes, sir.

Q. At all times, in your relations, you were  
66 acting as chairman of the Brotherhood?

A. Yes.

Q. Mr. Woofen, you did not mean to testify that there was an agreement between you and Mr. Wilkes mutually, you representing the Brotherhood and he representing the Terminal Company, to accept, to put into effect, the findings which might be made by the United States District Court in the Dallas, did you?

A. Well, in answer to that, I found out later on that I had misunderstood, what I first did understand; and that is the reason I think that this case is here now; because it was my understanding, whether definitely stated or not, or an impression, that the Courts or the Administrator would decide the one and only question of whether tips were part of wages, and that the railroads, including the

Jacksonville Terminal Company, would accept that decision. Later on, after the Dallas case had been decided by lower Courts, there was some delay in appealing, the appellation of it, and I discussed this matter during that time. And Mr. Wilkes asked me if I knew whether it was going to be appealed or not. Later, at another conference, he told me it had been appealed. That is where I got my first information that it had been appealed. And I told him at that conference, when he told me that it had been appealed, that we could not wait two or three years for that case to be tried and to go to the Supreme Court, and lose the opportunity under the law of getting endemnity wage.

Q. But there was no assertion on your part that you had agreed that that would be accepted?

A. No, I wouldn't say that Mr. Wilkes had agreed.

Q. You knew that in the Findings and Recommendations, which have been submitted to you and identified, that one of the recommendations made by the presiding officer was: "1. That the Division take immediate steps through Court action to determine the validity of the accounting and guarantee arrangement under which many Red Caps are employed"?

67 A. Yes, I knew that.

Q. Therefore, you knew that the Department of Labor took the position that it did not have the authority to determine the validity of that accounting and guarantee system, but it was one which must be determined by the Courts?

A. Well, from my knowledge of the general actions upon the part of employers throughout the country, particularly the railroads, they were going to take the matter to Court, because they have not complied with the Fair Labor Standards Act.

Q. That Fair Labor Standards Act?

A. Yes; in a general way. But there have been many cases brought to enforce the provisions of that law for railroad employees.

Q. But you knew at the time you were negotiating or corresponding with Mr. Wilkes that the United States Department of Labor thought that it was a matter to be decided finally by the Courts?

A. During the latter part of 1939 and early 1940, yes.

Q. The Administrator of the Fair Labor Standards Act, or the Department of Labor, has never made any finding of its own, has it?

A. Not to my knowledge.

Mr. Hartridge:

That is all.

#### Re-Direct Examination.

By Mr. L'Engle:

Q. But it was your understanding with Mr. Wilkes that you and he could not decide this question, and that that would have to be determined by either Mr. Andrews or by some judicial proceeding?

68 A. During the early part of my negotiations, it is my belief that Mr. Wilkes made every effort possible with his Board of Directors to settle this action, and eventually was prevented by the action of his Board of Directors from settling it pending Court decision on this question. And at no time during the entire negotiation, starting at the conference of November 4, 1938 and up until the signing of the agreement on August 7, 1940, to be effective August 1, 1940, was there any agreement between Mr. Wilkes and myself as to the correct pay for the Red Caps from October 24, 1938, until August, 1940. Now, we accepted without protest the wage paid to the Red Caps for the month of July, 1940, which is not the exact wage contained in the agreement signed effective August, 1940.

Q. Back of July 1, 1940 to the effective date of the act, was there any agreement or understanding between you

and Mr. Wilkes that this accounting and guarantee system would be the amount that these men would receive under the Fair Labor Standards Act?

A. No, sir.

Q. In other words, the whole thing was under negotiation at all times, and no definite agreement was ever entered into as to the rate of pay of the men under this accounting and guarantee system until judicial determination of that wage question was made?

A. I have already stated that it was a dispute existing under the terms of the amended Railway Labor Act affecting the wages of these Red Caps.

Q. Then you never accepted this guarantee and the accounting system on behalf of the Red Caps at all?

A. No, sir.

Mr. L'Engle:

That is all.

Mr. Hartridge:

That is all.

(Witness excused.)

69 FRANK LEGGETT, a witness upon behalf of the plaintiff, having been first duly sworn, deposes and says:

#### Direct Examination.

By Mr. L'Engle:

Q. Your name and residence?,

A. Frank Leggett, 1617 Myrtle Avenue, Jacksonville, Florida.

Q. Where do you work, Frank?

A. Jacksonville Terminal Company.

Q. How long have you worked for them?

A. Twenty-one years.

Q. In what capacity?

A. For the last fifteen or sixteen years, I have been Captain of the Red Caps.

Q. Just explain what that position means, Captain.

A. Captain of the Red Caps sees that trains are properly met; assign wheel chairs and stretchers, and meet those trains on arrival; see that those people are taken care of; and to assign the Red Caps to different watches, and to meet the different trains that they are assigned to, and to see that they meet them.

Q. Prior to the 24th day of October, 1938, did the Jacksonville Terminal Company ever give you any money for any of the work that you did in or around the Terminal there as referred to, as Captain of the Red Caps?

A. No, sir.

Q. Where did you get any money for the services that you rendered?

A. All moneys that we received, or that I received personally, prior to the 24th of October, was received by tips from passengers that I waited on.

Q. What is a tip?

A. A tip is just, in other words, we assume it as a gift for services rendered.

Q. What did they give you?

A. A quarter, sometimes a dime, or a nickel. I have gotten as high as ten dollars, during the boom. People had plenty of money then and were liberal with it; like when they had those touring parties that they sent out here, when they were building up those different places in the southern part of the state, like Hollywood and those places, where we handled fifty or a hundred people on floats, that I would get as high as ten dollars and up on them.

Q. Prior to July 1, 1940, did you ever turn over to the Terminal Company any of the money you received from the passengers? .

A. - No, sir.

Q. Or any of your tips?

A. No, sir.

Q. Prior to October 23, 1938, did you ever make any accounting to the railroad company of any of the money received by you from the passengers?

A. No, sir.

Q. Prior to October 23, 1938, did the Jacksonville Terminal Company ever pay you any money at all for any work that you did down there in the position that you have just testified, that is, either as Red Cap or Captain of the Red Caps?

A. No, sir.

Q. What are the duties of a Red Cap or the Red Caps, in their work at the Jacksonville Terminal Company, in two parts; that is, prior to October, 1938 and subsequent thereto?

A. The duties of the Red Caps, their duty is to receive the assignments; and those assignments of course, consist of assisting passengers in and around the station, to taxi cabs and to meet the trains. Some of the assignments require them to be referred to stations at those Pullman cars that come in here in the morning; and that assignment covers the duration of the occupancy of those passengers on the car, and they are supposed to remain there until the last passenger gets off, and to assist the passengers that they are referred to ~~to~~ be available for waiting on them.

Q. Is there any distinction made between the services rendered by the Red Caps to the white passengers and the services rendered by the Red Caps to the colored passengers?

A. There is no difference, no, sir. There is an assignment of Red Caps to the white passengers and there is an

assignment of Red Caps to the colored coaches on the trains. The Red Caps are assigned to the white coaches and to the colored coaches; and those Red Caps are assigned to the Pullmans on all the trains that come in.

Q. Is there any difference in the manner in which he gets any money for the work at the Terminal Company from the white passengers and the colored passengers?

A. Well, the colored passengers are not as liberal as the white. But then, you can, naturally, get a whole lot more of them; and, in a lot of instances, you get more out of them because of bulk.

Q. But still if a colored passenger pays you money, you take it just the same?

A. They all pay you when they have it. If they don't have it, they will tell you they don't and you don't get anything out of that job.

72 Q. The Terminal Company does not pay you any money, then, for services rendered to the colored passengers as well as the white passengers?

A. They didn't pay us at that time, nothing for nobody.

Q. Now, since July 1, 1940, what has been the pay the Terminal Company has made to the Red Caps?

A. On July 1st, they substituted what is known as the dime a parcel system. Then, they notified us that we would be put on the minimum rate, which was thirty cents an hour, two dollars and forty cents for an eight hour job. And, of course, there is a little differential there in my case; and I get a little more than that, because at that time I was getting around \$2.65 a day and now my pay is \$3.20 effective as of August 1st, when it went in.

Q. You are still holding this Captain's job?

A. I am still holding the job that I had before.

Q. But the rest of the Red Caps get the same thing?

A. \$2.40 for eight hours.

Q. Is there any difference in the work that the Red Caps are doing subsequent to July 1, 1940 from the work they were doing prior to that time?

A. There is no difference in the work; but, there is a little difference in the assignments, but there is no difference in the work.

Q. Who is required to collect the money for the checks that are used now by the Terminal Company in the Red Cap work?

A. The Red Cap is given thirty checks, of course, he is charged up with thirty checks. When he gets rid of those checks, if he gets rid of them before his eight hours is up, he goes back to the office—they have a place provided there for him—and he gets as many checks more  
73 as he thinks he will need. And when he gets ready to report off duty, he reports back to the place that he got those checks and reports in ten cents for every check that he is short or every check that he has used.

Q. Now, does the Red Cap put those checks on the passenger's articles of baggage?

A. Those checks are attached to every article of hand baggage or luggage that the Red Cap handles; and, of course, the passengers are charged ten cents for every article or piece of hand baggage that the Red Cap handles.

Q. Who collects the ten cents?

A. The Red Cap collects it.

Q. And what do the Red Caps do with that ten cents?

A. They turn it in to the clerk that they have there.

Q. That system has only been in existence since July 1, 1940?

A. July 1, 1940.

Q. Prior to that time, there were no checks and there was no payment by the Red Cap of any money he received from the passengers?

A. No, sir. You were required prior to that time to report on a card the amount of your tips, the time that you consumed, and that card was turned in; but, of course, you were allowed to keep the money. And at the end of the fifteen day period, which they use down there to

compute your time, if there was any difference between the amount that you earned for the number of hours you worked, and the amount you reported in as tips, which they called the Accounting and Guarantee System, that difference was given to you by check on pay day; but if there was no difference, you didn't get no check.

74 Q. You were here yesterday and today when Mr. Wooten was talking. Is this the Mr. Wooten that was appointed by your organization to represent you in the negotiation with the Terminal Company under your wage and working agreement?

A. Yes, sir.

Q. Does anyone else have any authority to make any such negotiations?

A. No, sir.

Q. Now, who gave you instructions as to meeting trains, if any, in the event that sick or disabled persons were on the trains to be moved?

A. Those wheel chair orders were wired in by the conductor on the trains; and some of them were addressed to Mr. John L. Wilkes, president and general manager, and some of them were addressed to the Station Master; but they came out of the Station Master's office. His clerk got the report of them and turned over to me and I got the pick up order for the wheel chairs and stretchers coming in on all trains arriving here in the morning; and I bring them in as the men come in to report for duty and I take those men and assign them to meet those trains with those wheel chairs and stretchers.

Q. Prior to July 1, 1940, did the Terminal Company pay you any money for that work?

A. No, sir. The only money we got out of anybody, prior to the time that they put on that \$2.40 a day, was what we got out of the passengers.

Q. And that money was paid by the passenger direct to you?

A. Direct to me.

Q. Was there any set scale or set amount to be paid by the passengers for that handling?

A. No, sir; just whatever the passenger's financial condition allowed him to pay, that is all he pays.

75 Some of them didn't even do that well.

Q. When you were working for some of the employers of the Terminal Company, like Mr. Wilkes or some of the higher officials, were you paid by the Terminal Company for handling that?

A. No, sir. As a general rule, Mr. Wilkes always gave you something when you waited on him, and most of the officials, when you waited on them, they gave you a tip just like the rest of the passengers.

Q. But there was no difference between the tips that they gave you when you were working for them and what you did for all passengers except maybe in the amounts?

A. There was a difference between what you done for them and some of the passengers because, of course, I didn't expect an awful lot out of them, to start with. We can't afford to complain when the boss gives you something, you know.

Q. During the last several years, since 1930, 1931 or 1932, had the tips that you Red Caps received been as great or as much as in the prior years?

A. Well, up to 1929, when the stock market went to pieces up there, a Red-Cap job was a pretty good job. The amount that you made was determined by the effort that you put in trying to make it, because there was always plenty of work there. During the depression, or beginning with '29, the type of people that were handled in the winter, the rich ones, the people from the north, they didn't have the money, and in Florida they didn't make any, wasn't anybody down here. So, naturally we didn't make the money, because we were only handling a poor class of people and the tips became smaller. The railroads were forced to curtail the trains that they had and the schedules were cut down, and it was just a case where we

had to reduce forces, and those that we did keep there were making probably a couple of dollars a day, sometimes a dollar, and I have known days down there when they didn't make but about seventy-five or eighty 76 cents, in the summer time. Nobody had money to pay and they didn't have any, and nobody wanted to travel.

Q. And those that were traveling weren't tipping?

A. They were more careful with their money and of course they didn't give you as liberal a tip as they used to.

Q. These tips were paid by the passengers to you direct?

A. Direct to the Red Caps.

Q. No accounting was made of the tips you received prior to October 24, 1938?

A. No accounting prior to October 24, 1938.

Q. And at no time prior to July 1, 1940, did you ever turn over any money received by you to the company—from the passengers, I mean?

A. No, sir.

Q. And when you handled a wheel chair out of a train into the Terminal Building, the person in the wheel chair could give you a tip if he felt like it and if he didn't he didn't have to?

A. Yes, sir. There was no charge. We were instructed not to place any charge on any passenger for any service that we might render to the passenger. If they wanted to give you anything, it was all right; but you were not permitted by the company to charge them anything. I have known instances where we have given men as high as high as eight or ten days in the street, and where the passenger complained that the Red Cap charged them for waiting on him. That was prior to the first of July, this year.

Mr. L'Engle:

That is all.

Mr. Hartridge:  
No questions.

(Witness excused.)

### STIPULATION.

It is stipulated and agreed by and between counsel that the signatures of the witnesses to their depositions hereinabove set forth be and the same are waived.

### 78 NOTICE TO TAKE DEPOSITIONS UPON ORAL EXAMINATION.

To: Julian Hartridge, Esq., Attorney for Defendant,  
Jacksonville Terminal Company,  
304 Bisbee Building, Jacksonville, Florida.

Please take notice that at 3:00 o'clock P. M., on the 7th, day of October, A. D. 1940, in Room 703 Bisbee Building, Jacksonville, Florida, the plaintiffs in the above entitled cause will take the depositions of L. L. Wooten, General Chairman, Brotherhood of Railway and Steamship Clerks, whose address is the Acme Building, Wilmington, North Carolins, and John Love Wilkes, President of the defendant corporation, whose residence is 512 Lancaster Terrace, and whose office is 1000 West Bay Street, Jacksonville, Florida, upon oral examination, pursuant to the Federal Rules of Civil Procedure, before Raleigh C. Dowling, Notary Public, or before some other officer authorized by law to take depositions. The oral examination will con-

tinue from day to day until completed. You are invited to attend and cross-examine.

(S.) FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for Plaintiffs, C. L.  
Williams, Individually, et  
al.

525 Barnett National Bank Building,  
Jacksonville, Florida.

Received a copy of the foregoing Notice this 28 day of  
September, A. D. 1940.

(S.) JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendant.  
Jacksonville Terminal  
Company.

304 Bisbee Building,  
Jacksonville, Florida.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 1A.

RALEIGH C. DOWLING,

Notary Public.

79

Wilmington, N. C. Oct. 25th, 1938

Mr. C. G. Sibley,  
Asst. General Manager,  
Wilmington, N. C.

Mr. J. L. Wilkes,  
Pres.-General Manager,  
Jacksonville, Florida.

Mr. O. H. Page,  
Chairman-Board of Control,  
Savannah, Georgia.

Mr. O. T. Waring,  
Chairman-Board of Control,  
Charleston, S. C.

Dear Sirs:

The Interstate Commerce Commission under date of Sept. 29th, 1938; Ex parte No. 72 (Sub-No. 1) decided that employees commonly designated as "Red Capps" were employees under the terms of the Railway Labor Act.

As they are employed in and around stations, it is our contention that they come within the scope of our agreements, and are therefore covered by Group 3 of rule one of our agreement, and that we now have jurisdiction over such employees.

As they are covered by the scope rule of our agreement, all other rules covering group 3 are applicable, until such time as exceptions might be made to any of the rules.

Will you please advise your position in this matter.

Yours very truly,

General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 1.

RALEIGH C. DOWLING,  
Notary Public.

80

Wilmington, N. C. Nov. 14th, 1938.

Mr. J. L. Wilkes,  
Pres. General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

Referring to our conference on the 4th. relative to contract for Red Caps.

We would like to get this closed up as soon as possible and I was wondering if you could meet me about the 21st. or very soon thereafter and draw and sign a contract covering them as you did not seem to be willing to agree that our present contract should cover them.

Will you please advise me when you can go into this again with a view of drawing the rules along the general lines outlined to you on Nov. 4th.

Yours very truly,

(S.) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 2.

RALEIGH C. DOWLING,  
Notary Public.

Wilmington, N. C. Nov. 16, 1938.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville, Florida.

Dear Sir:

I have yours of the 15th your file T-15-1 in reply to mine of the 14th with regard to conference date on that matter of reaching an agreement and making a contract covering wages and working conditions for the Red Caps.

Just as soon as you have heard from your Executive Committee and received sufficient information on this question for you to go into it and make a contract I would appreciate your advising me as we would like to get it closed up as soon as possible and especially before the increase in winter time traffic and train service as many

81 of these men are complaining that they are not being worked while younger men are being

worked and as I advised you on October 25 that we considered these men come within the scope of our existing agreement until such time as a separate agreement might be made therefore, we will have the question of settling the hours and wages under the existing agreement until such time as you are ready to make a separate agreement which I advised you we were willing to make at the time of our conference on November 4.

I can meet you on this question at almost any date if you can give me three or four days notice.

Yours very truly,

(Signed) L. L. WOOTEN,

General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 3.

RALEIGH C. DOWLING,  
Notary Public.

Wilmington, N. C. Nov. 26, 1938.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

We have advised you that we will expect the terms of our existing agreement to apply to Red Caps until such time as changes might be made.

I am advised that the Red Caps are not being worked in accordance with their seniority; that junior men are being worked while senior men are not allowed to work.

You stated in your letter of the 16th that Red Caps were averaging \$3:00 per day, and if this is correct then it seems to us that the senior men who are being held out of service are entitled to \$3:00 for every day worked by a junior man.

Will you please check into this at once and have these men worked in accordance with their seniority, for unless this is done at once I will be forced to file claim for the senior men.

Yours very truly,

(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 4.

RALEIGH C. DOWLING,  
Notary Public.

82

November 30, 1938.

Mr. J. L. Wilkes,  
President General Mahager,  
Jacksonville, Fla.

Dear Sir:

We are attaching you one copy of proposed contract covering Red Caps.

As this matter has been under advisement for the past 30 days, we would thank you to set date for conference to discuss and if possible agree on the rules as outlined in the attached proposed agreement.

We have given every phase of this matter due consideration and feel that we have gone about as far as we can in the proposed rules and they are in line with the memorandum given you on Nov. 4th.

An early date for conference would be appreciated.

Yours very truly,

(Signed) J. L. E. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 4.

RALEIGH C. DOWLING,  
Notary Public.

1. Scoop of proposed Agreement to cover all employees in red cap service only.

2. Seniority roster of the red caps to be established, and first roster to be open for protest for a period of sixty days, and annual roster maintained thereafter.

3. Red caps to be allowed to use trucks.

4. Red caps to be counted as employees for the purpose of free transportation.

5. Red caps to carry out the duties of red caps only, and any of the other station forces not to be allowed to red cap on the days or dates they might work as other station forces.

6. In increasing and reducing forces, the seniority of red caps to be recognized.

7. Twenty-five cents per hour to be paid as a minimum on any day for four hours service, which can be spread in a period of not more than nine hours, or date within a twenty-four hour period, and red caps to be allowed such tips as they might secure during the entire time in and around station.

83 8. Captains to be paid at twenty-five cents per hour, and worked for six hours with pay during any twenty-four period, and allowed each day three hours without direct compensation.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 5.

RALEIGH C. DOWLING,  
Notary Public.

Dec. 7, 1938.

Mr. J. L. Wilkes,  
President General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

With reference to our many letters since October 24, with regards to Red Caps.

I am willing to hold the matter of making contract for them in abeyance owing to the Christmas rush, until after Christmas providing they are worked according to seniority and Mr. Greer will recognize seniority of these men, and does not put on so many over the week ends that none of them can make anything.

This is not being done, older men are off while younger ones are working, men have been told that they are knocked off and that they have no contract or seniority rights, and if that is the attitude of the Jacksonville Terminal Company, we will be forced to make claim for the senior men who are not worked while junior men are being worked, and take the matter of the present agreement covering these men to the Board as we feel that the present agreement does not cover them until such time as some other agreement may be reached.

On Oct. 15th Mr. Greer demanded that Edwin A. Thomas furnished a health certificate which was furnished on the 17th and he worked until the 28th and was knocked off, without any reason other than the baseball club would be worked as Red Caps, and junior men have been worked almost continuously since that time.

If we are to hold the contract matters in abeyance, such injustices must be rectified, for while we want to be reasonable we feel that the present agreement applies until such time as you may be willing to consider and agree on the proposals made to you some days ago.

Will you please check into this and advise me just what we may expect.

Yours very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 6.

RALEIGH C. DOWLING,  
Notary Public.

84

Jan. 13, 1939.

Mr. J. D. Wilkes,  
Pres.-General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

With regards to our many exchanges of letters and conference this morning with regards to contract for Red Caps.

As stated to you, we feel that the contract which we proposed is more than fair to the Terminal Co. and if the Terminal Co. can and will agree to the provisions of the proposal, we are willing to stand back of it regardless of the instructions put out by Mr. Andrews; in accordance with the terms of the agreement, providing this can be done without undue delay.

However if the Terminal Co. can not and will not make an agreement covering these men, we will be forced to claim any penalty which the law provides for the vio-

lation of the wage and hours law, which I believe is all cost and double pay, and it is with a view of sincerely trying to help the Terminal Co. and the men involved that the proposal was made.

The terms of the proposal are very fair and it is our belief that when a ruling is issued on this question by the wage and hour administrator, it would be very much more expensive to comply with that ruling than to now agree to the proposed contract as of Oct. 24th, 1938.

We understand that you will let us know about this immediately after Feb. 10th, which is the date of the meeting of the Board of the Jacksonville Terminal Co.

We shall be expecting your advise as soon after Feb. 10th. as convenient.

Yours very truly,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 7.

RALEIGH C. DOWLING,  
Notary Public.

Feb. 3, 1939.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville, Fla.

Dear Sir:

Referring to our many letters and conferences regarding rules covering Red Caps.

At our last conference you advised me that your Board of Directors would meet on Friday Feb. 10 and that you would take this question up with them at that meeting.

I would, therefore, appreciate your wiring me collect on Saturday morning February 11 and advising me when you can give me date to go into the rules which we have already submitted to you.

I also want to advise that unless we can meet very soon after February 10 and negotiate rules covering this class of employees, we will be forced to appeal to the National Mediation Board on this matter as it has been under consideration since October 1938 and while we want to be reasonable, we cannot continue to hold it open as it now stands.

I would appreciate your placing this fact before your Board of Directors and will expect to hear from you by wire Saturday morning February 11.

Yours very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 8.

RALEIGH C. DOWLING,  
Notary Public.

Feb. 20, 1939.

Mr. J. L. Wilkes,  
Pres. General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

Referring to your wire of the 10, and our many conferences and exchange of letters since Oct. 25th, 1938, with regards to contract for Red Caps.

I have given your wire much study, as it was somewhat of a disappointment to us, owing to the very fair offer we had made.

As we see this entire situation, the I. C. C. has ruled that these men are employees and under the terms of the Railway Labor Act, as amended.

One of the provisions of the Railway Labor Act is that there is a duty on carriers and organizations to make and maintain agreement on wages and working conditions.

You have, after proof was submitted; recognized our organizations as being the duly authorized organization to represent these men; and we have been very liberal in allowing time for some action on compliance with the law as to making agreements, but although almost four months has elapsed, we are no nearer an agreement that we were at the start.

We like to be law abiding citizens, and we also like to settle our differences on the property; but we do not feel that we can continue indefinitely to violate the law at least in spirit; and we feel that some action  
86 should be taken without continued delay.

Will you please advise us as soon as convenient just what you are willing to do on this matter, as we must make some move on it very soon.

Yours very truly,

L. L. WOOTEN,

General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 9.

RALEIGH C. DOWLING,

Notary Public,

March 5, 1939.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

With reference to our many letters about contract for the Red Caps on the Terminal.

I expect to be in Jacksonville Wednesday the 8th and would like to see you about this about 10 A. M.

We must make some disposition of this matter, and if you are still unwilling to make any move on it, there is little left for us to do; except invoke the services of the National Mediation Board, but we had much rather settle it on the property if possible to do so.

Yours very truly,

(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 10.

RALEIGH C. DOWLING,  
Notary Public.

87

Wilmington, N. C.,  
March 20, 1939.

Mr. J. L. Wilkes,  
President General Manager,  
Jacksonville, Fla.

Please wire your decision regarding contract for Red Caps.

L. L. WOOTEN.

Send paid charge B. of R. C.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 11.

RALEIGH C. DOWLING,  
Notary Public.

June 2d, 1939.

Mr. J. L. Wilkes,  
Pres. General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

Will you please refer to my letter of May 26th. with regards to conference on June 8th.

Will you please wire me whether or not you can arrange to meet me on that date, on the subject matter contained in my letter of the 26th.

I would like to have reply as early Saturday as possible so I may arrange my schedule for next week.

Yours very truly,  
L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 11.

RALEIGH C. DOWLING,  
Notary Public.

88

May 26, 1939.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville, Fla.

Dear Sir:

With reference to our correspondence regarding contract for Red Caps which case has been submitted to the National Board of Mediation.

I am wondering if you would be willing to meet and negotiate the proposed contract, we submitted leaving out the matter of payment of wages until such time as the wage and hours administration makes a ruling on this question.

If you would care to do this, we could negotiate all of the rules except the wage rules and enter into an agreement to apply whatever was finally ruled on by the wage and hour administrator with regard to payment of wages and then withdraw this case from Mediation as I believe from our letters and conferences we are pretty well agreed on all of the questions involved except that of wages.

Will you please advise me what you think on this matter and if you are agreeable to working out the agreement as outlined above, if you could meet me on this question on the morning of June 8th.

Yours very truly,

L. L. WOOTEN,

General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 12.

RALEIGH C. DOWLING,

Notary Public.

89

Agreement Between the Jacksonville Terminal Company and Employees Herein Named, Represented by The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Scope..

Rule 1.—These rules shall govern the hours of service and working conditions of all Red Caps, Red Cap Captains,

and all other employees handling hand baggage not already covered by agreement.

### Seniority.

Rule 2.—Seniority of employees covered by this agreement begins when they are or were assigned to duty by the Company. Senior employees will be assigned to preferred watches and/or shifts upon request.

### Seniority District.

Rule 3.—All employees covered by this agreement shall be in one seniority district.

### Leave of Absence.

Rule 4.—Leave of absence may be granted employees when they can be spared without detriment to the operation of the property, and in case of physical disability or sickness indefinite leave of absence will be granted. If leave of absence extends beyond thirty days except in case of physical disability and sickness, the General Chairman will be advised and if the leave of absence extends beyond 60 days an agreement as to its extent will be reached between the Company and the representative of the employees.

### Returning After Leave of Absence.

Rule 5.—An employee, returning after leave of absence, may exercise his seniority and displace any junior employee. Employees displaced by his return may exercise their seniority in the same manner.

### Reducing Forces.

Rule 6.—When reducing forces, seniority rights shall govern. When forces are increased, employees shall be

returned to service in the order of their seniority, providing this is done within a period of twenty-four (24) month; otherwise seniority standing is forfeited. Employees desiring to avail themselves of this rule must file their address in duplicate with the stationmaster, or other officer in charge as designated by the Company, at the time they are cut off the extra board, advising promptly in duplicate of any change in address. Employees failing to file their address when cut off the extra board or failing to file any change in address or failing to return to the service within seven days after being notified by mail or telegram sent to the last address given or giving satisfactory reason for not doing so, will be considered out of the service. The officer will sign and return to the employee as his receipt one copy of the address as filed.

#### Extra Board.

Rule 7.—There shall be maintained an extra board and when employees are cut off regular assignment they may exercise their seniority over any junior employee on the extra board. Short vacancies in regular positions will be filled by assigning the senior extra men to the position until the regular occupant returns. The number of men necessary to maintain the extra board will be agreed to from time to time between the employees or their representative and the Company and only such employees as are necessary to properly protect the work will be carried on the extra board. Employees carried on the extra board will not be required to comply with Rule 6 but when cut off the extra Board they must file their address as outlined in Rule 6 within 10 days from the time they are notified that they are cut off the extra board.

### Duties of Red Caps.

Rule 8.—Employees covered by these rules may be required to perform any and all duties of Red Caps, consisting of the handling of hand baggage for passengers, invalid rolling chairs, stretchers, and in other ways assisting passengers in and around the station and in and around trains while at the station; and they will be allowed to use hand trucks to perform this work but will not be required to do any janitor work or work covered by other agreements. The Company will have the right to assign the handling of rolling chairs, stretchers, and similar special work to any of the employees on duty.

### Hours of Service.

Rule 9.—It is agreed that where service is intermittent, employees may be held on or for duty for nine hours in a calendar day within a 16-hour spread.

### Rosters.

Rule 10.—Seniority rosters for all employees covered by these rules, showing name and proper dating, will be posted in agreed upon places accessible to all employees affected. The roster will be revised and posted in January and July of each year and will be open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employee or their representative, such error will be corrected. The duly accredited representative of the employees will be furnished with copy of all rosters.

It is understood that if the dating shown opposite any name goes over one protest period of sixty days (60) such dating will not thereafter be changed unless protest has been made and is under investigation at the

time the first sixty (60) days period in which protest can be made has expired.

Rule 11.—Employees whose regular positions are abolished may exercise seniority rights over junior employees on regular positions and/or on the extra board, providing this is done within a period of ten (10) days. Other employees affected may exercise their seniority in the same manner. Employees who do not desire to exercise their seniority may file their address as provided in Rule 6 at the expiration of ten (10) days and be subject to call when forces are increased as outlined in Rule 6.

#### Re-Entering the Service.

Rule 12.—Employees voluntarily leaving the service will, if they re-enter, be considered new employees.

#### Validating Records.

Rule 13.—The application of new employees will be approved or disapproved within sixty (60) days after the applicant begins work, unless a longer time is mutually agreed to by the Management and representative of the employees. In the event of applicant giving false information, this rule shall not apply.

#### 91 Discipline and Grievance Investigation.

Rule 14.—An employee who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employee of his choice or duly accredited representatives. He may, however, be held out of service, pending such investigation. He shall, upon

request, have not to exceed five (5) days advance notice of such investigation and be apprised in writing of the charges against him. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within 10 days after the completion of investigation.

### Hearing.

Rule 15.—An employe dissatisfied with the decision shall have a fair and impartial hearing before the next proper officer, provided written request is made to such officer and a copy furnished to the agent or officer whose decision is appealed, within seven (7) days of the date of the advice of the decision. Hearing shall be granted within seven (7) days thereafter, and decision rendered within seven (7) days of the completion of the hearing.

### Appeal.

Rule 16.—If an appeal is taken from this hearing it must be filed with the next higher official and a copy furnished the official whose decision is appealed within ten (10) days after the date of the decision. The hearing of the appeal shall be held within ten (10) days and a decision rendered within five (5) days after completion of hearing.

### Grievances.

Rule 17.—An employe who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within seven (7) days of the cause for complaint.

## Representation.

Rule 18.—At the hearing or on the appeal, the employe may be assisted by one or more duly accredited representatives.

## .Right of Appeal.

Rule 19.—The right of appeal by employes or their representatives in the regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the railroad to whom appeal may be made, is hereby established.

## Advice of Course.

Rule 20.—An employe, on request, will be given a letter stating the cause of discipline. A copy of all statements made a matter of record at the investigation or on the appeal will be furnished on request to the employe or his representative.

## Exoneration.

Rule 21.—If the final decision decrees that charges against the employe were not sustained, the record shall be cleared of the charge if suspended or dismissed, the employe shall be reinstated and paid for all time lost.

92

## Date of Suspension.

Rule 22.—If an employe is suspended, the suspension shall date from the time he was taken out of the service.

## Transportation.

Rule 23.—Committees of employes will be granted transportation when, possible to obtain, and necessary

leave of absence for investigation consideration, and adjustment of grievances.

### Organized Membership.

Rule 24.—No discrimination will be made in the employment, retention, or conditions of employment of employees because of membership or non-membership in labor organizations.

### Pending Decision.

Rule 25.—Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will be neither a shut-down by the employer nor a suspension of work by the employees.

### Attending Court.

Rule 26.—Employees taken away from their regular assigned duties at the request of the Management, to attend Court or to appear as witnesses for the Company, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place and, in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the Company.

### General.

#### Posting Notices.

Rule 27.—Suitable bulletin board will be provided for posting notices of interest to employees covered by this schedule, and employees will be allowed to post notices of interest to themselves on this bulletin board.

### Equipment Furnished.

Rule 28.—Hand trucks and badges required by the Company to perform the work covered in this agreement will be furnished by the Company without cost to the employees.

### Free Transportation.

Rule 29.—Employees covered by this agreement and those dependent upon them for support will be given the same consideration in granting free transportation as is granted other employees in service.

General Committees representing employees covered by this agreement will be granted the same consideration as is granted general committees representing employees in other branches of the service.

### Service Letters.

Rule 30.—Employees whose applications are approved and who have been in the service sixty (60) days or longer, will, upon request, if they leave the service of the Company, be furnished with service letter showing length of time in service, capacity in which employed and cause of leaving.

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### Effective Date.

Rule 31.—This agreement shall be effective June 16, 1939, and shall continue in effect until it is changed as provided herein or under the provisions of the Railway Labor Act as amended June 21, 1934.

Should either of the parties to this agreement desire to revise or modify these rules, 30 days written advance

notice, containing the proposed changes, shall be given and conferences shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.

(S) J. L. WILKES,

President and General Manager,  
Jacksonville Terminal  
Company.

(S) L. L. WOOTEN,

General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 13.

RALEIGH C. DOWLING,  
Notary Public.

94

July 8, 1940.

Mr. J. L. Wilkes,

President-General Manager,  
Jacksonville, Florida.

Dear Sir:

I have yours of the 2nd your file Z-23-C regarding physical handicaps of certain Red Caps.

I expect to be in Jacksonville on Tuesday the 16th and can meet you anytime Tuesday morning the 16th that is agreeable with you and will get in touch with your office to find out the time.

Yours very truly,

(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 14.

RALEIGH C. DOWLING,  
Notary Public.

July 25, 1940.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville, Florida.

Dear Sir:

I have yours of the 24th your file T-15-1.

I note that you say it will take about three weeks to get a definite answer from your Executive Committee on the back pay of the Red Caps, therefore, you should be in position to give a definite answer to this back pay on or before August 7 and as soon as you are in position to give a definite answer, I would appreciate your advising me as I am being urged to enter suit as I explained to you in your conference on July 16.

I note what you have to say with regard to the recent wage agreements as to rates of pay of Red Caps and as advised you in conference on July 16, we shall expect what ever wage agreement that is reached between us to be applied as of July 1 and we will give consideration to the agreement signed with the New York Central and the Chicago Union Station Company and other agreements which may be signed during the next few days as I understand a number of conferences are now in progress on the question of wages of Red Caps and I hope you will be in position on or before August 7 to make us a definite proposition on the question of wages as we have made you a proposition on this question and we are open for any counter proposition you might desire to make but feel that the question of wages beginning with July 1, should be closed up as early as convenient.

Yours very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 15.

RALEIGH C. DOWLING,  
Notary Public.

95

August 2, 1940.

Mr. J. L. Wilkes,  
President General Manager,  
Jacksonville, Florida.

Dear Sir:

I have yours of the 1st your file T-15-1.

I will be at your office at 9 A. M. Wednesday August 7.

While in conference with you on July 16, I gave you copy of our proposal on wages for the Red Caps which was briefly that Red Caps would be paid the minimum set for the wage and hour law, that captains would be paid ten cents per hour addition and the end of each semi-monthly period the Company would add up the revenue received from Red Caps service and prorate the amount received above the wages paid to the Red Caps among these employes on the basis of hours worked.

We understood your letter of July 24 to be a tentative proposal on wages.

If we cannot agree on the wage effective July 1 along the above outlined it is our proposal to establish effective July 1, a rate of 36 cents per hour for all Red Caps with an additional \$25.00 per month for Red Cap Captains and where splits in service spread over twelve hours, several hours actual work with eight hours pay be established with time and one half for all time used of more than seven hours or in other words the same working conditions as exist in the baggage and mail department for excessive split tricks or intermittent service.

We would prefer the proposal presented on July 16 and if this is accepted we would be willing to let the present hours stand if there is no profit sharing agreement reached,

we feel that the men are entitled to additional pay or time off with pay where they are required to work split tricks over a long period of time.

We hope you will be able to discuss this matter on August 7, and get it in such shape that we can close it up very soon after August 7.

Yours very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 16.

RALEIGH C. DOWLING,  
Notary Public.

Wilmington, N. C.,  
August 7, 1940.

Mr. J. L. Wilkes,  
President General Manager,  
Jacksonville Terminal Co.,  
Jacksonville, Fla.

Dear Sir:

I am attaching you 7 signed copies of agreement on wages of Red Caps which I understood you would be willing to sign, and I would thank you to sign and return for my files four copies, if the agreement meets with your approval.

I am mailing this to you as I have a wire late this afternoon and do not know definitely whether I can fulfil my engagement at 4:30 P. M. Friday or not, so if you will kindly sign and mail to me, 4 copies of the agreement it will not be necessary for me to see you Friday as the men have advised me this agreement would be acceptable to them.

If for any reason this agreement as written up is not acceptable please wire me at the Bay View Hotel, Tampa, Florida. Thursday the 8th and I will try to see you some time during the day Friday the 9th so we may make any necessary changes, however, I think it is in accord with our discussion this morning except the last item or item 4 which I feel you will not object to.

Yours very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 17.

RALEIGH C. DOWLING,  
Notary Public.

August 17, 1940.

Mr. J. L. Wilkes,  
President-General Manager,  
Jacksonville, Florida.

Dear Sir:

I have yours of the 14th with regard to back pay for Red Caps.

What I told you was that these men were becoming very restless and that I had about exhausted my efforts so far as the back pay was concerned in holding them back from entering suit and that unless something was done very shortly after our conference on July 16th, I felt sure they would enter suit.

I am not advising a suit but I do feel that this matter has been in handling a sufficient time and that the law is plain and I cannot see why a suit under the wage and hour law should in any way effect our future relations and hope our future relations will not be effected by what ever these men decide to do about their pay.

I am entering suit or rather the wage and hour department is entering suit at my request at Savannah, Ga. as soon as the papers can be drawn up and the Administrator assigns the legal staff to the case.

Yours, very truly,  
(Signed) L. L. WOOTEN,  
General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 18.

RALEIGH C. DOWLING,  
Notary Public.

97

Jacksonville, Florida,  
Oct. 24th, 1938.

To Red Cap .....  
Jacksonville Terminal Company:

In view of the requirements of the Fair Labor Standards Act, effective October 24, 1938; and in consideration of your hereafter engaging in the handling of hand baggage and traveling effects of passengers or otherwise assisting them at or about stations or destinations, it will be necessary that you report daily to the undersigned the amounts received by you as tips or remuneration for such services.

The carrier hereby guarantees to each person continuing such service after October 24, 1938 compensation which, together with and including the sums of money received as above provided, which will not be less than the minimum wage provided by law.

You are privileged to retain subject to their being credited on such guarantee all such tips or remuneration received by you except such portion thereof as may

be required of you by the undersigned for taxes of any character imposed upon you by law and collectible by the undersigned.)

All the matters above referred to are subject to the right of the carrier to determine from time to time the number and identity of persons to be permitted to engage in said work and the hours to be devoted thereto, to establish rules and regulations relating to the manner, method and place of rendition of such service, and the accounting required.

**JACKSONVILLE TERMINAL  
COMPANY.**

By J. L. WILKES,

President-General Manager.

I have read the foregoing, which is thoroughly understood by me.

.....  
Red Cap.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 19.

**RALEIGH C. DOWLING,**  
Notary Public.

98

Jacksonville Terminal Company.

Jacksonville, Fla.,  
October 27, 1938.

T-15-1.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway & Steamship Clerks,

Box 33,

Wilmington, North Carolina.

Dear Sir:

I acknowledge receipt of your letter of October 25, 1938, in regard to I. C. C. Ex Parte No. 72, decision of

September 29, 1938, regarding Red Caps, and your contention that they come within the scope of our existing agreement with the Brotherhood of Railway & Steamship Clerks:

It is my opinion that Paragraph (a) under the subject of Exceptions in our agreement exempts Red Cap service from the application of the rules of that agreement, as they are individuals performing personal service not a part of the duties of the company. Red Caps were not included or mentioned by name in the negotiation of our existing agreement, and in our recent conference subsequent to the decision of the I. C. C., Ex Parte 72, you stated to me that your organization did not represent the Red Caps. I think the wording of our agreement under Exception (a) is very clear, and must have had in mind such a type of employe as the Red Cap, who performs strictly personal service for the passengers which is not a part of the duty of the company. However, assuming that my views as above expressed should be held to be wrong, it still seems to me that in view of the fact that your organization has never represented Red Caps in the past, these Red Caps, now termed by the I. C. C. to be employes under the Railway Labor Act, should have a voice as to whom represents them; and until such a time as the entire matter is cleared up, we do not feel that representation arbitrarily seized or taken by your organization should be recognized. Possibly, some clarification of this may come in the near future, and I shall be glad to talk it over with you on your next trip into Jacksonville.

Yours very truly,

(S) J. L. WILKES,

President-General Manager.

JLW:W

CC: Mr. C. G. Sibley

Mr. O. H. Page

Mr. O. T. Waring

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 20.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville Terminal Company.

99

Jacksonville, Fla.,  
November 15, 1938.

T-15-1.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway and Steamship Clerks,  
Post Office Box Thirty-three,  
Wilmington, North Carolina.

Dear Sir:

I have your letter of November 14, in further reference to the question of a contract for Red Caps.

There seems to be considerable confusion on this question. I have written to my Executive Committee in an effort to establish some policy in regard to it, and until I hear from them—and I have not as yet been favored with replies to my letter of the 4th to them—I will not know what we can do in regard to the matter.

I am advised that there is considerable confusion in regard to several of the questions brought up by you, such as, for instance, the question of tips being accredited, etc. Until I hear something definite, I can't very well set a date on the matter.

Yours very truly,  
(Signed) J. L. WILKES,  
President-General Manager.

JLW-W

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 21.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville Terminal Company.

T-15-1.

Jacksonville, Fla.,  
November 16, 1938.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway and Steamship Clerks,  
Post Office Box Thirty-three,  
Wilmington, North Carolina.

Dear Mr. Wooten:

In further reference to my letter of November 15, in reply to yours of the 14th, in regard to the question of a contract for Red Caps.

I have been trying to check up on some of the statements made by you in our last conference. So far,  
100 I have not been able to hear anything from the Cincinnati Union Station Company, where, I understood you to say, a contract had been entered into. The Washington Terminal Company has not yet entered into any contract, as I understand it, but are handling their Red Caps situation on pretty much the same lines as we are.

I understood you to say Mr. Andrews, or some of his representatives had made a ruling that tips were not to be considered as wages, but from the best information I can get at Washington, it would seem that this question has not yet been ruled upon by Mr. Andrews, and that his counsel has it under advice on similar questions which have been raised by other railroads and, possibly, the Association of American Railroads.

Until the matter crystallizes more and we have a better understanding of what we are to do, I do not think we should attempt to negotiate any contract, and unless we know the basic fundamentals as to wages and tips, it is going to be difficult to work out an equitable agreement. At the present time, our Red Caps are averaging around \$3 a day, and their actual time consumed in doing this work, not the spread, certainly wouldn't go over 3½ hours, or would not exceed that.

With kindest personal regards, I am

Yours very truly,

J. L. WILKES, (s)

JLW:W

President-General Manager.

Filed in evidence as PLAINTIFF'S EXHIBIT No. 22.

RALEIGH C. DOWLING,

Notary Public.

1939 Feb. 10 PM 58

QA90 Cak Jacksonville Flo 10.329P

L. L. Wooten, General Chairman, Brotherhood of Railway and Steamship Clerks Third Floor Labor Temple Acme Bldg. Wilmington NCar.

Your letter February Eighth: Information received yesterday indicates that practically no change has taken place in the Red Cap situation, and after full discussion to day, we feel that this situation at all larger terminal will have to be ironed out on a similar basis for all terminals, and that, in the absence of any definite information from Mr. Andrews, we are not in a position

to negotiate an agreement until we know more about what we are doing.

Personal regards.

J. L. WILKES.

Filed in evidence as PLAINTIFF'S EXHIBIT No. 23.

RALEIGH C. DOWLING,  
Notary Public

101 Jacksonville Terminal Company,  
Jacksonville, Florida.

February 21, 1939.

T-15-1.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway and Steamship Clerks,  
Box 33,  
Wilmington, North Carolina.

Dear Sir:

I have your letter of February 20, acknowledging my wire of the 10th instant, which I sent you as agreed upon in our personal conversation, immediately after our Board meeting on that date.

I appreciate the situation of uncertainty which exists in regard to Red Caps. Up to the present time, there just simply seems not to be a scheme or plan suggested or agreed upon as a whole among any of the larger station operations as to the proper steps to take in this matter in the interest of both parties concerned.

The consensus of opinion seems to be that some definite, national policy should be worked out on this question which will embrace somewhat of a similar handling at

all of the larger station in given territories. For instance, New York, Philadelphia, Washington, Jacksonville, and Richmond should certainly be handled along the same general lines, and it seems to us that it is better to go slowly in the matter until we know what is the proper course to take rather than have one company attempt to make an agreement, then another a different kind of an agreement, and so on, with the result that we would have a dissimilar condition in all of these large operations. I am advised that we can get no definite information whatever on the question of wages and that there is a wide divergence of opinion among attorneys, both of the carriers and your own interests, as to many phases of the Wage-Hour Act; and many of them go so far as to say that it does not even apply. I am writing you freely about the matter because I do not want you to feel that we are showing any lack of respect whatever to your request, but, on the other hand, we are extremely anxious that whatever we do be the right thing.

Yours truly,

(S.) J. L. WILKES,

JLW:W

President-General Manager.

Filed in evidence as PLAINTIFF'S EXHIBIT No. 24.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville, Fla., March 20, 1939.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of R. R. Clerks,  
Wilmington, N. C.

Wire date—regret am unable to do any thing at present.  
My people wish to see what ruling will be on tips before

we can agree to wage rates. Feel entire contract should  
hinge on that question. Will agree to contract  
102 as soon as that feature is cleared up. Think you  
should be willing to await that action.

J. L. WILKES.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 25.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville, Fla., June 3, 1939.

L. L. Wooten, General Chairman,  
Brotherhood of R. R. Clerks,  
Acme Bldg.,  
Wilmington, N. C.

Will see you as requested stop. Feel sure we can work  
out situation satisfactorily.

J. L. WILKES.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 26.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville, Fla., June 3, 1939.

L. L. Wooten,  
General Chairman of R. R. & Steamship Clerks,  
Labor Temple, Third Floor, Acme Bldg.,  
Wilmington, N. C.

Your letter of May twenty sixth and June Second; I am  
working hard on this and should be able to advise late  
today or Monday by wire.

J. L. WILKES.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 27.

RALEIGH C. DOWLING,  
Notary Public.

Jacksonville, Fla., July 2, 1940.

Z-23-C.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway Clerks,  
P. O. Box 33,  
Wilmington, N. C.

Dear Sir:

We adopted the 10 cents charge on baggage handled by Red Caps, effective July 1, as I previously wired you. We are now working the men on an eight hour basis insofar as a minimum day is concerned, on a split trick within a spread of 16 hours.

103 We are up against the problem of three of our men with one arm, Eddie Kittle, Henry Perry, and Fleming Hawkins; and we also have Henry Perry and Charlie Brooks, who cannot read. John Speights is just able to hobble around, because of old age and infirmity. Andrew Lang is paralytic on one side. Hugh Edmondson is ruptured on both sides. Willie Anderson is asthmatic and in very bad shape, and Charles Brooks is old and infirm. These particular men are quite a load on us, and we would like to reach some understanding with you as to what is best to do with them. I want to be as sympathetic as I can, but at the same time, with a small force of Red Caps on hand, we find that these men are giving us a lot of trouble, due to their inability to perform within reasonable limitations of efficient work. The question of reading and writing is very important when it comes to matching checks and our one-armed men

are particularly handicapped in attaching checks to the baggage with only one arm.

Please give this some thought so that we may find an amicable way to dispose of it when you come done, which I understand will be somewhere around the 15th.

With kindest personal regards, I am

Yours very truly,

(Signed)

J. L. WILKES,

JLW:W.

President-General Manager.

cc to: Mr. W. L. Edwards,  
District Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 28.

RALEIGH C. DOWLING,

Notary Public.

Jacksonville, Fla., July 24, 1940.

T-15-1.

Confidential.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway Clerks,  
Box 33,  
Wilmington, N. C.

Dear Mr. Wooten:

I have placed before my Board of Directors your proposal, as discussed by us, for settlement of the Red Cap problem as to back pay. I doubt if I can hear from them in the three weeks you mentioned, but you can be assured that I will try to do so. I got this letter off the day following your visit to me and I think by the time it gets around

through all the attorneys and passenger agents and others, it is going to take pretty close to three weeks for me to get a definite answer from the four members of my Executive Committee.

I have not yet mentioned the other matter of cooperative participation in the receipts, as proposed by you, as I did not want to confuse the main issue of settlement with that item until we decided on the settlement question first. Incidentally, I have just received information that the New York Central has reached an agreement with Townsend's Red Cap organization which provides, in effect, for either (1) the monthly wages based on the Fair Labor Standards Act minimum, or (2) the total receipts collected and remitted by each Red Cap, after deduction of  $1\frac{3}{4}$  cents per parcel or piece of baggage handled and collected for by the Red Cap, will be paid, depending upon which is greater. In other words, out of each 10 cents collected and reported by a Red Cap, the carrier will retain  $1\frac{3}{4}$  cents and pay to the Red Cap the applicable minimum

for each hour worked, or  $8\frac{1}{4}$  cents for each parcel  
104 handled and reported by him, whichever is greater. The purpose of this payment plan, as stated in the agreement is to afford a method by which Red Caps may add to their earnings through increased attention to passenger:

This is exactly the situation which we are running into here. The neglect of some of our Red Caps to passengers is startling.

I also understand that your organization has reached an agreement with the Chicago Union Station Company, under which wages will be paid at the rate of 39 cents an hour for eight hours, or at the rate of  $3\frac{3}{4}$  cents per check used, whichever is greater.

I am not sending you a copy of these agreements because I assume that they will be sent to you by your own people in due course, but if you want a copy I shall be

glad to have it made and sent to you, as I only have one copy of these new agreements.

With kindest personal regard, I am

Yours very truly,

(Signed)

J. L. WILKES,

President-General Manager.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 29.

RALEIGH C. DOWLING,

Notary Public.

Jacksonville Terminal Company.

J. L. Wilkes,

President & General Mgr.

Jacksonville, Fla., August 7, 1940.

Mr. L. L. Wooten, General Chairman,  
Brotherhood of Railway & Steamship Clerks,  
Care Seminole Hotel,  
Jacksonville, Florida.

Dear Sir:

In checking over my memoranda I notice I suggested to you that the new one-cent arrangement of the Red Caps be effective July 1st. I intended to say August 1st, and I hasten to correct this.

Our payrolls have been closed for July, and I would not want to go back and mess up the Auditing Department on that month. I trust this is satisfactory to you.

I tried to get you at the Seminole shortly after you left here, but failed.

Yours very truly,

J. L. WILKES,

President-General Manager.

Filed in evidence as PLAINTIFF'S EXHIBIT No. 30.

RALEIGH C. DOWLING,  
Notary Public.

105

Jacksonville, Fla., August 9, 1940.

The Jacksonville Terminal Company of Jacksonville, Fla., has inaugurated a plan whereby all hand baggage handled by Red Caps is being checked and a charge of 10 cents per parcel or bag is being charged for Red Cap service, paid to the Red Cap by passengers, and turned in by him to the Terminal Co.

It is agreed that effective August 1, 1940, the Jacksonville Terminal Co. will compensate its Red Caps on the following basis:

1. Red Caps will be paid the hourly wage established by the Hours and the Wage Law, or orders of the Administrator, at the minimum set in such orders or law.

2. Captains will be compensated at the rate of ten (10) cents per hour above the minimum; said ten (10) cents per hour to be paid by the Company and not included in item 3.

3. Daily records of each Red Cap's hours, tags sold, and money re-remitted, will be kept by the Company; at the end of each 15 day period or pay roll period, all money received from sale of checks, etc., by Red Caps will be totaled, wages paid to Red Caps, deducted, after one (1) cent per parcel or tag has been set aside for Company expenses, the remaining nine (9) cents used to pay wages of Red Caps, and Captains, other than the ten (10) cents per hour for Captains covered in Item 2.

If the sum total of nine (9) cents per parcel handled and or tags sold is greater than the wages paid to Red Caps

for that period, the remaining funds will be divided among all Red Caps on the basis of hours worked during the pay roll period, so that all Red Caps will share alike for each hours service, from this fund. If the nine (9) cents per parcel handled is not sufficient to pay wages outlined in item (1) of this agreement, the Terminal Co. agrees to pay the wages as outlined in item 1.

4. Upon request of the General Chairman, the Jacksonville Terminal Company will review with him the earnings of the Red Cap forces, from time to time, and may check the records of any or all men in Red Cap Service.

This wage agreement to become a part of working agreement effective June 16th, 1939.

(Signed)

JACKSONVILLE TERMINAL CO.,

J. L. WILKES,

President-General Manager.

BROTHERHOOD OF RAILWAY & S. S.  
CLERKS, FREIGHT HANDLERS,  
EXPRESS AND STATION EM-  
PLOYES,

(Signed) L. L. WOOTEN,

General Chairman.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 31.

RALEIGH C. DOWLING,  
Notary Public.

106 Jacksonville Terminal Company.

J. L. Wilkes,  
President & General Mgr.

Jacksonville, Florida, August 14, 1940.

T-15-1.

Mr. L. L. Wooten,  
General Chairman,  
Brotherhood of Railway and Steamship Clerks,  
Box 33,  
Wilmington, North Carolina.

Dear Sir:

Referring to our several conferences, during which you advised me that it was going to be necessary for you to enter suit on behalf of our Red Caps for refund of tip money deducted as salaries under the Wage and Hours Act, and you agreeing to wait until the end of this week, or approximately four weeks, for me to consider your proposals in lieu of suit and advise our final determination on such proposals.

This question, and your proposal to settle on the basis of a refund of tips deducted without recourse to penalty, has been carefully considered by this Company and its owning carriers.

Several suits of a similar nature have already been brought to issue and at least some of them are now before the Appellate Court in the Form of appeals, and these cases seem to have the same main question of issue as is

involved here, i. e. whether tips can be considered wages, under all the circumstances involved in Red Cap work on railroads, under the Wage and Hours Act. Under these circumstances it seems to us that there will be nothing to gain on the part of your organization by entering suit against the Jacksonville Terminal Company since the same identical questions are now up for decision by the Appellate Courts, or will be shortly. Even though it is to be done, and you were successful in the lower Courts, we cannot see why the final settlement will be expedited over waiting to see what the outcome will be on the cases now pending. It will probably have the effect of unsettling our forces and disturbing the satisfactory relations between your organization and the Terminal Company which have existed for years, and in the final analysis it would seem to me that the same results could be just as quickly obtained after the Dallas or some other case is decided where similar question is at issue.

Under the circumstances we feel that we cannot accept your proposal at this time, and we express the further sincere hope that after mature deliberation you will decide that it will be unnecessary to drag each of us into Court on this matter, which is the subject of a strongly divided opinion of both lawyers and laymen, and which apparently seems to have considerable merit in the contentions of each viewpoint. The cases now on appeal will certainly reach a final decision within a reasonable time and I think we ought to await such decision.

Yours very truly,

J. L. WILKES,  
President-General Manager.

Filed in Evidence, as PLAINTIFF'S EXHIBIT No. 32.

107

RALEIGH C. DOWLING,  
Notary Public.

Agreement between the Jacksonville Terminal Company and Employes herein named represented by The Brotherhood of Railway and Steamship Clerks Freight Handlers, Express and Station Employes.

#### Scope.

Rule 1—These rules shall govern the hours of service and working conditions of all Red Caps, Red Cap Captains, and other employes handling hand baggage not already covered by agreement.

#### Seniority.

Rule 2—Seniority of employes covered by this agreement begins when they are or were assigned to duty by the Company. Senior employes will be assigned to preferred watches and or shifts upon request.

#### Seniority Districts.

Rule 3—All employees covered by this agreement shall be in one seniority district.

#### Leave of Absence.

Rule 4—Leave of absence may be granted employes when they can be spared without detriment to the operation of the property, and in case of physical disability or sickness indefinite leave of absence will be granted. If leave of absence extends beyond thirty days except in case of physical disability and sickness the general Chair-

man will be advised and if the leave of absence extends beyond 60 days an agreement as to its extent will be reached between the Company and representative of the employees.

#### Returning After Leave of Absence.

Rule 5—An employee, returning after leave of absence may exercise his seniority and displace any junior employee. Employees displaced by his return may exercise their seniority in the same manner.

#### Reducing Forces.

Rule 6—When reducing forces seniority rights shall govern. When forces are increased, employees shall be returned to service in the order of their seniority, providing this is done within a period of twenty four (24) months; otherwise seniority standing is forfeited. Employees desiring to avail themselves of this rule must file their address in duplicate with the stationmaster, or other officer in charge as designated by the Company, at the time they are cut off the extra board, advising promptly in duplicate of any change in address. Employees failing to file their address when cut off the extra board or failing to file any change in address or failing to return to the service within seven days after being notified by mail or telegram sent to the last address given or giving satisfactory reason for not doing so will be considered out of the service. The officer will sign and return to the employee as his receipt one copy of the address as filed.

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#### Extra Board.

Rule 7—There shall be maintained an extra board and when employees are cut off regular assignment they may exercise their seniority over any junior employee on the

extra board. Short vacancies in regular positions will be filled by assigning the senior extra man to the position until the regular occupant returns. The number of men necessary to maintain the extra board will be agreed to from time to time between the employes or their representative and the Company and only such employes as are necessary to properly protect the work will be carried on the extra board. Employes carried on the extra board will not be required to comply with rule 6 but when cut off the extra board they must file their address as outlined in rule 6, within 10 days from the time they are notified that they are cut off the extra board.

#### Duties of Red Caps.

Rule 8—Employes covered by the rules may be required to perform any and all duties of Red Caps consisting of the handling of hand baggage, for passengers, invalid rolling chairs, stretchers, and in other ways assisting passengers in and around the station and in and around trains while at the station; and they will be allowed to use hand trucks to perform this work but will not be required to do any janitor work or work covered by other agreements. The Company will have the right to assign the handling of rolling chairs, stretchers and similar special work to any of the employes on duty.

#### Rates of Pay.

Rule 9—The hourly rate of pay of Red Caps shall not be less than that established by the wage and hours law and in addition thereto captains shall be paid \$10.00 per month. In consideration of the low pay and terms of this agreement, employes covered by this agreement will be allowed to keep such tips as they might receive without being required to make any accounting to the Company.

### Hours of Service.

Rule 10—It is agreed that where service is intermittent, employes may be held on or for duty for nine hours in a calendar day with the minimum pay of four hours at usual rate and if held on or for duty in excess of nine (9) hours in any calendar day they will be paid for actual hours held beyond nine (9) hours at pro rata rate. If employes get off of their own accord during any calendar days assignment they will be paid for hours worked or held for duty on a prorata basis as outlined in this rule.

### Rosters.

Rule 11—Seniority rosters for all employes covered by these rules showing name and proper dating will be posted in agreed upon places accessible to all employes affected. The roster will be revised and posted in January and July of each year and will be open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employe or their representative such error will be corrected. The duly accredited representative of the employes will be furnished with copy of all rosters.

It is understood that if the dating shown opposite any name goes over one protest period of sixty days (60) such dating will not thereafter be changed unless protest has been made and is under investigation at the time the first sixty (60) days period in which protest can be made, has expired.

### Positions Abolished.

Rule 12—Employes whose regular positions are abolished may exercise seniority rights over junior employees on regular positions and or on the extra board providing

this is done within a period of ten (10) days. Other employees affected may exercise their seniority in the same manner. Employees who do not desire to exercise their seniority may file their address as provided in rule 6 at the expiration of ten (10) days and be subject to call when forces are increased as outlined in rule 6.

### Re-Entering the Service.

Rule 13—Employees voluntarily leaving the service will if they re-enter, be considered new employees.

### Validating Records.

Rule 14—The application of new employees will be approved or disapproved within sixty (60) days after the applicant begins work, unless a longer time is mutually agreed to by the Management and representative of the employees. In the event of applicant giving false information, this rule shall not apply.

### Discipline and Grievance Investigation.

Rule 15—An employee who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employee of his choice or duly accredited representatives. He may, however, be held out of service pending such investigation. He shall, upon request, have not to exceed five (5) days advance notice of such investigation and be apprised in writing of the charges against him. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within 10 days after the completion of investigation.

### Hearing.

Rule 16—An employe dissatisfied with the decision shall have a fair and impartial hearing before the next proper officer provided written request is made to such officer and a copy furnished to the agent or officer whose decision is appealed, within seven (7) days of the date of the advice of the decision. Hearing shall be granted within seven (7) days thereafter, and decision rendered within seven (7) days of the completion of the hearing.

### Appeal.

Rule 17—If an appeal is taken from his hearing it must be filed with the next higher official and a copy furnished the official whose decision is appealed within ten (10) days after the date of the decision.

The hearing of the appeal shall be held within ten (10) days and a decision rendered within five (5) days after completion of hearing.

### Grievances.

Rule 18—An employe who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within seven (7) days of the cause for complaint.

### Representation.

Rule 19—At the hearing or on the appeal, the employe may be assisted by one or more duly accredited representatives.

### Right of Appeal.

Rule 20—The right of appeal by employes or their representatives in the regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the railroad to whom appeal may be made, is hereby established.

### Advice or Cause.

Rule 21—An employe, on request will be given a letter stating the cause of discipline. A copy of all statements made a matter of record at the investigation or on the appeal will be furnished on request to the employe or his representative.

### Exoneration.

Rule 22—If the final decision decrees that charges against the employe were not sustained, the record shall be cleared of the charge; if suspended or dismissed, the employe shall be reinstated and paid for all time lost.

### Date of Suspension.

Rule 23—If an employe is suspended, the suspension shall date from the time he was taken out of the service.

### Transportation.

Rule 24—Committees of employes will be granted transportation when possible to obtain, and necessary leave of absence for investigation, consideration and adjustment of grievances.

### Organized Membership.

Rule 25—No discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organizations.

### Pending Decision.

Rule 26—Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will be neither a shut-down by the employer nor a suspension of work by the employees.

### Attending Court.

Rule 27—Employees taken away from their regular assigned duties at the request of the Management, to attend Court or to appear as witnesses for the Company, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken place, and, in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the Company.

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### General.

#### Posting Notices.

Rule 28—Suitable bulletin board will be provided for posting notices of interest to employees covered by this schedule and employees will be allowed to post notices of interest to themselves on this bulletin board.

### Equipment Furnished.

Rule 29—Hand trucks, uniforms, badges and caps, required by the Company to perform the work covered in

this agreement will be furnished by the Company without cost to the employees.

### Free Transportation.

Rule 30—Employees covered by this agreement and those dependent upon them for support will be given the same consideration granting free transportation as is granted other employees in service.

General Committees representing employees covered by this agreement will be granted the same consideration as is granted general committees representing employees in other branches of the service.

### Service Letters.

Rule 31—Employees whose applications are approved and who have been in the service sixty (60) days or longer, will, upon request, if they leave the service of the Company, be furnished with service letter showing length of time in service, capacity in which employed and cause of leaving.

### Effective Date

Rule 32—This agreement shall be effective (.....), and shall continue in effect until it is changed as provided herein or under the provision of the Railway Labor Act as amended June 21, 1934.

Should either of the parties to this agreement desire to revise or modify these rules 30 days' written advance notice, containing the proposed changes, shall be given

and conference shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.

.....  
 President-General Manager, Jacksonville Terminal Company.

.....  
 General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 33.

RALEIGH C. DOWLING,  
 Notary Public.

Certificate.

I, Gustav Peck, do hereby certify that I am the presiding officer named and designated, by an order of the Administrator of the Wage and Hour Division, United States Department of Labor, dated June 5, 1939, published in the Federal Register at Washington, D. C., on June 7, 1939, volume 4, number 109, pages 2306-2307, to take testimony and hear argument submitted with respect to matters set forth in said order. I further certify that the mimeographed copy of Findings and Recommendations to which this certificate is attached are those made by me pursuant to said order.

(S.) GUSTAV PECK.  
 (Gustav Peck)

Dated: October 2, 1940.—

Filed in Evidence as PLAINTIFF'S EXHIBIT No. 33.

RALEIGH C. DOWLING,  
Notary Public.

113 Findings and Recommendations of the Presiding  
Officer.

September 28, 1939.

R-445.

For release Saturday, October 14, 1939.

Before the United States Department of Labor,  
Wage and Hour Division,  
Washington, D. C.

In the Matter of Hearing on Proposed Amendments of  
Part 516 (Records to be Kept by Employers) of the  
Regulations Issued Under Section 11 (c) under the  
Fair Labor Standards Act of 1938.

Red Caps or Hand-baggage Porters.

The International Brotherhood of Red Caps, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and sundry other parties having filed petitions with the Administrator for an amendment to Part 516 of Regulations issued by the Administrator under authority of Section 11 (c) of the Fair Labor Standards Act of 1938—Title 29, Labor, Chapter 5—Wage and Hour Division, the Administrator gave notice of a public hearing to be held at 939 D Street,

Northwest, Washington, D. C., at 10 o'clock A. M., June 27, 1939, before the undersigned as Presiding Officer. Subsequently, when it was found necessary to provide larger seating capacity, the place of the hearing was changed to the auditorium of the Department of Commerce Building.

Pursuant to notice, the undersigned convened the hearing and an opportunity was afforded to all who appeared during a two day session to present testimony and to question witnesses through the Presiding officer. At the hearing, the International Brotherhood of Red Caps and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, and Express and Station Employees, claiming to represent together the majority of the Red Caps, filed petitions with the Administrator to amend Part 516 of the Regulations. The petitions were supported by other interested parties. The Association of American Railroads, which appeared on behalf of substantially all of the employers of red caps in the United States, opposed any changes in the present regulations. Briefs and additional statements were filed subsequent to the hearing by various parties. At the request of the Association of American Railroads, the record was kept open until August 15 for this purpose. The three main parties in interest were then given until September 15, to furnish argument upon the final briefs submitted.

Proposed Amendments to Records Regulations; the Position of The Association of American Railroads.

The term "red cap" as used hereafter includes any employee whose duties consist of, or include, handling passengers' baggage and other articles at various passenger stations. There was no argument on the supposition

115 that these employees, of which there are approximately 6000 in the United States,<sup>1</sup> are engaged in "commerce" and are entitled to the benefits of the minimum wage provisions of the Act.<sup>2</sup>

The Administrator, having received many complaints alleging that in a number of instances red caps were not being paid the minimum wage, called the hearing on the question:

"What, if any, amendment should be made to Part 516 of the Regulations issued by the Administrator under Section 11 (c) of the Fair Labor Standards Act of 1938 to require special or additional records to be kept by employers of red caps or hand-baggage porters."

An employer subject to provisions of the Act is required under Section 516.1 of the Regulations to make and preserve records showing, among other things, "total wages paid for each workweek". Paragraph (d) of Section 516.4 defines the term "wage or wages" as follows:

"For the purpose of these Regulations, the term 'wage' or 'wages' means all remuneration for employment of whatsoever nature whether paid on time work, piece work, salary, commission, bonus, or other basis."

<sup>1</sup> The International Brotherhood of Red Caps estimates that there are between 6000 and 8000 of these employees. Returns to a questionnaire of the Interstate Commerce Commission filed in 1938 by 250 carriers covering their operations at 350 stations indicated approximately 4300 red caps in cities of over 100,000 population.

<sup>2</sup> The receivers of the Seaboard Air Line, through counsel, indicated that their participation in the proceeding was not to be taken as constituting an admission on their part that red caps "under all circumstances" were employees within the meaning of the Railway Labor Act. (99) The Association of American Railroads, representing substantially all the carriers, recognizes that red caps are employees of the railroads (365). (Figures in parenthesis here and elsewhere in this Report, refer to pages of transcript.)

Under this definition, the carriers at present show in their records as "wages paid" to red caps in their employ the tips and gratuities reported as received by the red caps from passengers or other persons. The two principal petitioners request that the Regulations be amended to prohibit the recording of tips as "wages" paid by the employer.

The International Brotherhood of Red Caps proposes an amendment to accomplish this purpose which would be known as Section 516.6 and would provide that:

116. Employers of red caps or hand-baggage porters shall not include directly or indirectly in their records of wages, extra wages, additions to wages or total wages required to be kept by Section 516.1 hereof any amounts received by red caps or hand-baggage porters as tips or gratuities from person other than their employers, such as passengers and the like. In no event may tips or gratuities to red caps or hand-baggage porters be counted as part of the wages required by the Fair Labor Standards Act.

The Brotherhood of Railway and Steamship Clerks proposes that:

Part 516, Section 516.4 (d) be amended by adding after the final words of said paragraph (d) "or other basis" the following language: "but shall not include tips or gratuities received by employees of employers specified in Section 13 (b) of the Act from passengers or persons other than the employer."

The Association of American Railroads contends that the present records regulations are "definite and clear" (363) and adequately serve the purpose for which they

were intended. The Association contends that the amendment of the records regulations as proposed by petitioners would constitute an administrative ruling not authorized by the terms of the Act. Their position is that the amendments attempt under the guise of a records regulation to determine a matter of substance which only the Courts can decide; that is the question whether the present arrangement by which red caps record the tips and gratuities received and the railroad terminal companies agree to guarantee that each and every red cap will receive at least the minimum wage as in conformity with Section 6 of the Fair Labor Standards Act.

In order to understand clearly the issues raised by the contentions of the parties, it is necessary to consider the history and details of the present arrangement by which the carriers compensate red cap employees. This report will therefore consider in turn:

#### 117 The "Accounting and Guarantee" Arrangement Adopted by the Carriers.

Results Growing Out of the Operation of the "Accounting and Guarantee" Arrangement.

Finding and Recommendation.

#### The "Accounting and Guarantee" Arrangement Adopted by the Carriers.

Prior to the enactment of the Fair Labor Standards Act, most red caps were forced to rely upon tips and gratuities given them by the traveling public as their sole source of income. In only exceptional cases and these were generally where red caps also had additional assignments, were they paid small regular salaries to sup-

plement the receipt of tips and gratuities. Prior to October 24, 1938, in the Union Station of Omaha, Nebraska, red caps were called "ushers" and were paid \$3.40 per day under a union agreement; in the St. Paul, Minnesota, terminal red caps were called "porters" and were paid about \$70.00 a month. (Exhibit 27.) By far the majority of the red caps, perhaps up to 80 per cent or more of those employed in these duties, received only the amounts which accumulated as tips from the traveling public. Of an estimated 4300 red caps employed in 1938 in cities of over 100,000 population, returns to a questionnaire filed with the Interstate Commerce Commission by employers of red caps show that 3,150 received compensation only through tips.<sup>3</sup>

Red caps were employed on the premises of the carriers subject to the regulation and control of the railroad or terminal companies, to carry baggage and packages and to perform other services for passengers.

118 From time to time they were asked to carry out various other duties for the terminal, such as cleaning the station platform, carrying messages, and paging passengers.

Since October 24, 1938, one railroad entered an agreement with a union covering all red caps employed and classifying them as "porters". This agreement provides for the payment of wages by the railroad at or above the minimum provided in the Act, and excludes tips. (21, 49, 50 and Exhibit 27.) By far the majority of red caps, however, receive compensation only through the tips received from the traveling public.

When the Fair Labor Standards Act was enacted, the carriers, according to their testimony, gave serious con-

<sup>3</sup> Interstate Commerce Commission, Ex Parte 72 (Sub-No. 1), Decided September 29, 1938.

sideration to the problems raised by the Act to determine "whether they could devise any way to avoid having saddled upon them an additional cost of operation of upwards of two million dollars per year", (365). While red caps were admittedly their employees, they did not feel impelled to pay them 25¢ per hour out of payroll funds. Instead the carriers instituted the "accounting and guarantee" arrangement which they believed would meet the requirements of the law. Under this arrangement, each red cap is requested to report the amount of tips received every day. There is no change in the method of compensation of red caps; but if the total amount received from the public is less than 25¢ per hour the carrier agrees to make up the difference.

This arrangement was designed to avoid as far as possible any payment to red caps from the payroll funds of the carriers. As the spokesman for the carriers expressed it:

"The only change it proposed to make from the one that has been in effect all the years before was simply to add the element of a guarantee to these men.

119. These men had been working all the years, generally speaking, for the tips they could get. The change that was proposed was to let them continue to do that, but add the one additional element of a guaranty to them that if they didn't make the minimum required by the law, the railroad would make it up to them." (369-370.)

Pursuant to this plan each carrier issued the following notice to its red caps (or another notice similarly phrased):

.....  
(Place and Date)

To Those Carrying Hand Baggage of Passengers or Otherwise Assisting Patrons of the Railroad on Railroad Premises, Commonly Called Red Caps:

.....  
(Location)

In view of the requirements of the Fair Labor Standards Act, effective October 24th, 1938, and in consideration of your hereafter engaging in the handling of hand baggage and traveling effects of passengers or otherwise assisting them at or about stations or destinations, it will be necessary that you report daily to the undersigned the amounts received by you as tips or remuneration for such service.

The carrier hereby guarantees to each person continuing such service after October 24, 1938, compensation which together with and including the sum of money received as above provided, will not be less than the minimum wage provided by law.

You are privileged to retain subject to their being credited on such guarantee all such tips or remuneration received by you except such portion thereof as may be required of you by the undersigned for taxes or any character imposed upon you by law and collectible by the undersigned.

All the matters above referred to are subject to the right of the carrier to determine from time to time the number and identity of persons to be permitted to engage in said work and the hours to be devoted thereto, to establish rules and regulations relating to the manner,

method and place of rendition of such service, and the accounting required.

.....  
(Name of Railroad)

.....  
(Name & Title of Officer<sup>4</sup>  
Signing)

120 In most instances copies of the notice were served personally upon each red cap and a receipt was required (89, 169, 175, 228). Verbal and written protests were made by some of the employees, but they were told that they must sign the receipts or cease working (82, 159, 160, 169, 204, 226-228, 239, 270-272). The record shows that in one instance the notice was posted on the bulletin board and no request was made that the red caps employed in that station sign it (324-325).

The contention of the Association of American Railroads is that these notices served upon the employees constituted enforceable contracts entered into as a condition of employment and resulting in a constructive turning over of tips to the employer and payment back to the employee.

#### Results Growing Out of the Operation of the "Accounting and Guarantee" Arrangement.

Testimony offered at the hearing shows convincingly that the records kept by the carriers of tips reported as received by red caps do not represent accurately the tips received by these men. Under the present minimum, red caps must receive wages at the rate of two dollars for working an eight-hour day. The record is replete with statements that red caps, unable to earn the mini-

<sup>4</sup> Exhibit 8 of Record of Hearing.

mum in tips during the day, falsely register that amount on the record slips provided by the employer (32, 57-63, 82-84, 161, 192). Numerous red caps testified at the hearing that they padded their reports when they made less than twenty-five cents an hour in tips (192, 328). The reason for this false reporting of tips was said to be the fear of discipline or discharge by the carriers for failing to report the minimum (146, 161, 171, 177, 310-314). However, it appears to have become well-nigh the universal practice to report \$2.00 each and every day, even in cases where the men have always received considerably more than \$2.00 in the past; such falsification, initiated by the red caps themselves and continued on the advice of their union officers, presumably on the ground that the railroads themselves are not interested in accurate records beyond the receipt of \$2.00 per day, (349) must have its basis in other considerations than the fear of discipline or discharge. The railroads have acquiesced in this practice.

There was testimony that a station master told the employees to report 25 cents an hour regardless of whether the amount reported was actually earned (170). One witness testified that the station master in a large city had discontinued requiring the men to report and advised the red caps that henceforth the railroad would report 25 cents an hour for the men (137). Witnesses testified that several of the red caps were discharged for failing to report twenty-five cents an hour (160, 171). The record contains allegations that false reports of tips were made by red caps from fear of discipline of the possible loss of employment, whether such fears were justified or not. On the other hand, the Association of American Railroads has submitted documentary evidence supported by affidavits to show that at many of the stations where these specific charges were made the rail-

roads have repeatedly made up the difference between amounts reported by the men and the guarantee and that at these stations no reductions in the number of red caps employed have been made as a result of the guarantee.

122       The "accounting and guarantee" arrangement by which most of the carriers compensate their red caps is of necessity applied by minor company officials—local officers such as station masters, head porters, and station agents. It appears from the record that many of these officials have made it be known in one way or another that the red caps ought to report the receipt of two dollars for eight hours work regardless of the amount actually received. The possible misapplication of the arrangement by subordinate officials is admitted by Counsel for the Association of American Railroads in the following statement (392):

"I have had personal experiences, and everyone else has had, of subordinate officers not carrying out strictly the intent of the instructions that they get from above, and I wouldn't be surprised to find that in some instances there have been actions of the sort that have been charged here—that is, certain men in immediate charge of these fellows, for fear of criticism by someone above them, indicated to these fellows what they wanted them to do."

The testimony substantiates this statement and fully demonstrates the impossibility of determining from the records of carriers kept to conform with the regulations of the Wage and Hour Division whether red caps are receiving the minimum wage provided by the Act.

Memorandum submitted subsequent to Hearing, *passim*.

Part 516 are Regulations and Records to be Kept by Employers issued Pursuant to Section 11 (c) of the Fair Labor Standards Act. The carriers appear to have taken rather lightly their own obligations to keep accurate records. In answer to a charge made at the hearing that "red caps are required to turn in slips showing checks of \$2.00 in tips before they can go to work so that the records will be in shape" (137), the carrier replied in an affidavit that the slips of the red caps "are deposited in a box \* \* \*. It may be that they are placing the report in the box before they complete their day's work. For this the company is not responsible". (Memorandum, Caption 5.) This is a totally unwarranted assumption.

123 It is the Company's obligation to keep accurate records under the law and the regulations and this shedding of responsibility, directly traceable to the "accounting and guarantee" arrangement, is indicative of the lighthearted attitude taken by some of the officials of the carriers toward their obligation under the Act. In another terminal the form of the slip required to be filled out by the red caps was changed after the Act was in effect 5 months and thereafter it did not even have a provision for reporting tips received. The Company alleges, however, that "red caps have specific instructions at the end of each payroll period when they report to the auditor's office to pay Railroad Retirement Act taxes to report at that time if during the period they failed to receive in tips an amount equal to the sum they were entitled to receive under the Fair Labor Standards Act. It is generally understood by the red caps that the Terminal Company will pay any difference upon red caps reporting the amount necessary to meet the minimum requirements". (Memorandum, Caption 5.) This is only another indication of the casual handling by subordinate officials of the obligations of the carriers under the Act.

In many instances, testimony of petitioners' witnesses has been controverted by affidavits filed by the Association. These affidavits have been studied with care and have been given full weight in the consideration of this problem. Thus in many cases dismissal of red caps was shown to have been not for the purpose of coercing them to report earnings of at least \$2.00 a day but because of infractions of rules, neglect of duty, or merely to reduce costs. Furloughs have often been made on a strict seniority basis. The testimony of the representatives of the Association at the hearing shows that in numerous cases tips when below the minimum wage established by law are in fact regularly and consistently supplemented by payments from the carriers (266-268, 406-409).<sup>6</sup>

124 In these cases the amount of the check received by the individual red cap from the carriers is usually small, ranging from a few cents to five or six dollars each fifteen-day payroll period. The record indicates that the red caps at a few stations receive make-up checks from the railroads each period (406-409, 413). These stations usually have little of the more lucrative tipping assignments and additions to the tips received, by red caps must be made constantly.

In many cases where red caps are unable to earn two dollars for eight hours of work, the assignments given them by the carriers are responsible. For red caps are at times required to perform other duties which prevent them from carrying the bags of passengers and thereby diminish their opportunities to earn tips.<sup>7</sup> In many sta-

<sup>7</sup> For example, in one terminal the red caps are each required to run an elevator one day a week. In order to comply with this requirement the red caps have themselves hired a man to run the elevator. (148.)

<sup>6</sup> One large railroad in the seven months preceding April 30, 1939, paid \$12,075.59 to its red caps as the difference between their reported tips and the minimum wage required by statute (412-413).

tions red caps perform janitor work for the carriers in addition to their red cap duties. (258, 259, 288.) The record shows that red caps often mop, sweep, and clean the stations and station platforms, wash windows, page passengers, care for children traveling alone, assist in transporting ill passengers, call trains, collect and deliver mail, run errands, and perform other services which

are not expected to yield tips and which therefore diminish their opportunities to earn at least 125. 25 cents per hour in tips. (12, 13, 152, 172, 256, 259, 263). In some stations the small amount of traffic or the type of people traveling (commuters and college students) prevent the red caps from receiving amounts in tips equal to 25 cents an hour. As indicated in the record, some of the railroads recognize these deficiencies in such stations and have consistently made up the difference between the tips actually received and the legal minimum. However, it does not appear that this is a common practice and all too often the red cap for fear of discipline or the possible loss of his job is forced to bear the burden of the poor location or assignment.

Even in terminals with a large flow of passenger traffic some red caps are assigned to watches and tricks which cannot yield an average earning of twenty-five cents an hour. The assignments are sometimes for a few hours in a single day, one day in the week, or permanent. In order to prevent the concentration of such assignments some, but not all, terminal companies provide a complete rotation of the red caps in the various posts of the station; the taxicab stand, the day coaches, the Pullman coaches, the locals, and the entrances usually used by passengers arriving and leaving the station on street cars (315-318). Of course if red caps were free to work in the terminals wherever they thought they could best earn tips, they would not work the less desirable positions.

Since the effective date of the Act, most of the carriers have taken the position that if the tips reported by the red caps consistently fall below the minimum wage the logical inference is that the particular station has too large a number of red caps in proportion to the amount of traffic and as a consequence red caps are laid off. However, in the situations set forth in the preceding paragraphs where red caps sweep, clean, and perform other services around the stations or work in positions or in stations where they have little opportunity to earn twenty-five cents an hour by carrying bags for passengers, a failure to list the minimum as being received in tips would not necessarily indicate a lack of diligence and assiduity on the part of the red caps or even an excessive staff of red caps. In such cases it is doubly important that red caps be protected in their right under the law to be paid no less than twenty-five cents per hour.

The present form of time cards kept by the carriers for red cap employees makes no provision for a segregation of the various types of work which they perform and hours worked on each type of work. The records kept by the carriers, although they differ slightly from company to company, usually provide columns for listing the number of hours worked by each red cap, tips received, deductions made for taxes or other purposes, and the additional sum paid by the carrier to make up the difference between the reported tips and the applicable minimum wage (397-404). At the small stations and terminals it is common for red caps to do janitorial and related work, but in these places it is also more common to hire men as cleaners and to assign them at various times during the day to red cap duty. The usual wage for cleaners, while it is different in different areas, is said to be considerably more than the minimum required

by the Fair Labor Standards Act. In only one notable instance was the record kept by the carrier substantially different. At this terminal the daily report form in use at the date of the hearing provided spaces for itemizing (1) time consumed in waiting on each passenger; (2) number of parcels handled; (3) tips received from each passenger. Each red cap, according to the testimony, received credit as hours worked only the time spent  
 127 in waiting upon the passengers. The remaining time during which he was held for work at the terminal was not included in the computation of his hours on duty. (57-63.) Counsel for the carriers conceded at the hearing that this was improper and in the memorandum filed subsequent to the hearing stated that a retroactive adjustment is being made and that in the future this terminal will calculate the earnings of red caps on the basis of time held for work. (Memorandum p. 9.)

According to the testimony of many of the red caps there has been an appreciable decline in the amount received as tips since the passage of the Act. (38, 39, 70, 88, 165, 171, 181, 185, 186, 192, 205, 206, 450-460.) The usual explanation is that the public has mistakenly been given the impression through the press that red caps now receive a regular wage from the carriers and that tips are no longer their sole support. Several witnesses estimated that their own income from tips had declined about one-third. (71, 171.) Another witness testified that tips had declined but that the cut in the force had had a counteracting effect upon his receipts. (88.) The carriers subsequently submitted affidavits by station masters and some red caps that to the best of their knowledge where tips may have declined after the effective date of the Act, they soon returned to customary levels. (Memorandum, Captions 3 and 5.)

In the light of all of the evidence there can be no conclusion other than that the pay roll records of the carriers for Red Caps generally do not accurately record the data as to wages paid. It also appears that there is grave legal doubt as to the validity under the Fair Labor Standards Act of the accounting and guarantee arrangement which the carriers have used. It is, therefore, recommended:

1. That the Division take immediate steps through Court action to determine the validity of the accounting and guarantee arrangement under which many Red Caps are employed.

2. And, pending an authoritative Court decision determining the validity of the accounting and guarantee arrangement, that employers be required to keep records which show separately from other amounts paid as wages, the amount of tips which are claimed by the employer to be wages paid.

3. It is also desirable that records kept by employers for employees engaged in occupations in which tipping may occur shall record the number of hours worked each week in such tipping occupations separately from the number of hours worked in other occupations, if the employee accounts for or turns over to the employer the amount of tips received from third persons.

(S.) GUSTAV PECK,  
(Gustav Peck)  
Presiding Officer.

October 12, 1939.

Filed in Evidence as PLAINTIFF'S EXHIBIT No. "A"  
for identification.

RALEIGH DOWLING,  
Notary Public.

129      Receipt for Back Wages Due Under the Fair  
Labor Standards Act.

Date August 17, 1939.

Received \$10.05 from Jacksonville Terminal Company,  
Located at Jacksonville, Florida, due under the provisions  
of the Fair Labor Standards Act of 1938 for the period  
of my employment from October 24, 1938, to August 15,  
1939.

It is my understanding that by signing this receipt I  
do not forfeit or release my right to sue for such addi-  
tional amount as may be due under Section 16 (b) of the  
Act.

Signed: WALTER BURCH,  
Address: 708 1/2 Davis Street,  
Jacksonville, Florida.

.....  
(Witness' Signature)

225 Post Office Building,  
Jacksonville, Florida.  
(Witness' Address)

Filed in Evidence as DEFTS. EXHIBIT No. A for Identification.

RALEIGH C. DOWLING,  
Notary Public.

130 Revised Agreement Between the Jacksonville Terminal Company and Employees Herein Named Represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

Effective February 1, 1937.

131 Jacksonville Terminal Company.

Agreement Between the Jacksonville Terminal Company and Employees Herein Named Represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

#### Scope.

Rule 1.—These rules shall govern the hours of service and working conditions of the following employees subject to the exceptions noted below:

Group (1) Clerks—(a) Clerical Workers.

(b) Machine Operators.

Group (2) Other office and station employees—such as office boys, messengers, chore boys, train announcers, gatemen, baggage and parcel room employees, train and engine crew callers, telephone switchboard operators, elevator operators, office, station and warehouse watchmen and janitors.

Group (3) Laborers employed in and around stations, storhouse, and warehouses.

### Exceptions.

These rules shall not apply to the following:

(a) Individuals where amounts of less than \$30.00 per month are paid for special service which take only a portion of their time from outside employment or business; or to individuals performing personal service not a part of the duties of the Company; nor to the personal office force listed below:

132. (b) All employees in the office of the President-General Manager,

(c) Chief Clerk and Stenographer in office of the Comptroller,

(d) All employees in office of the Treasurer,

(e) Ticket Agent,

(f) General Mail and Baggage Agent,

(g) One Assistant General Mail and Baggage Agent,

(h) Chief Clerk and Stenographer in office of Master Mechanic,

(i) Chief Clerk in office of Purchasing Agent-Store-keeper.

Note: Qualified employees covered by this agreement will be given preference on excepted positions over out-

siders. Additional excepted positions will not be created without agreement with accredited representatives of the employees.

### Definition of Clerical Workers.

Rule 2—(a) Clerical Workers: Employees who regularly devote not less than four (4) hours per day to writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work.

(b) Machine Operators: Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones, and other similar equipment.

133 The foregoing definitions—paragraphs (a) and (b) shall not be construed to apply to:

(1) Employees engaged in assorting tickets, waybills, etc., nor to employees operating office or station appliances or devices not requiring special skill or training—such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and work of like nature; nor to employees gathering mail or other similar work not requiring clerical ability.

(2) Office boys, messengers and chore boys, or to other employees doing similar work.

(3) Students and apprentices qualifying for special clerical work or as machine operators.

(4) Employees performing manual work not requiring clerical ability.

### Seniority.

Rule 3—Seniority begins at the time employee's pay starts on the seniority district and in the class to which assigned.

When two or more employees enter upon their duties at the same hour on the same day, employing officers shall at that time designate respective rank of such employees.

New employees or employees from other seniority groups filling positions or vacancies of 30 days or less duration, will not establish seniority until they are assigned to a regular position. Their seniority will then date from the day they began work on that position.

134 Clerks holding Group (1) positions who were promoted from Group (2) positions shall be permitted to return to that class Group (2) when their positions in Group (1) is abolished (provided they are unable to secure another clerical position by exercise of seniority) under the following conditions:

1. They will retain their seniority dating in Group (2) which they held at the time of promotion and shall be allowed to exercise such seniority rights when returning to Group (2) from Group (1) position but will not be shown on Group (2) seniority roster except as hereinafter provided for.

2. They must return to clerical service if there is an opportunity to do so during the ensuing 24 months from the time they are demoted.

3. They will continue to accumulate clerical seniority in the district where they were cut off but will not accumulate any seniority as a Group (2) employee except as provided in Section No. 4.

4. If there is no opportunity to return to clerical service within 24 months they will then lose all clerical seniority standing but will have restored to them their original seniority as Group (2) employee accumulated up to the date they lose clerical seniority, so that they will then rank on the Group (2) seniority list exactly the same as if they had never been promoted.

Thereafter such an employee cannot re-enter clerical service except as a new employee so far as seniority is concerned.

135 Clerks holding Group (1) positions who were promoted from Group (3) positions shall be permitted to return to Group (3) positions in the Department from which promoted when by exercise of seniority they can no longer hold a position in Group (1); provided their return to Group (3) will not displace an employee older in service in that Group. The retention of Group (1) seniority shall be subject to provisions of Rule 15.

#### Promotion Basis.

Rule 4—Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to excepted positions or to paragraph (4) of Rule 2.

Note: The word "sufficient" is intended to more clearly establish the right of the senior clerk or employee to

bid in a new position or vacancy where two or more employees have adequate fitness and ability.

### Seniority Districts.

Rule 5—Seniority districts are established as follows:

- (1) Ticket Department,
- (2) Mail and Baggage Department,
- (3) Mechanical Department,
- (4) Accounting Department,
- (5) Stores Department,
- (6) Transportation Department,
- (7) All employees of Group (2) of Rule 1 except those covered in seniority district number (8) and (9).
- 136 (8) All employees of Group (3) of Rule 1, also baggage and parcel room employees other than clerks working in the baggage and mail department.
- (9) Janitors and all of Group (3) not covered in seniority district number (8).

### Bulletin.

Rule 6—When one or more positions or vacancies are to be filled, bulletin notices showing location, title, hours of service, whether 6 or 7 day positions, and rate of pay will be posted promptly in agreed upon places accessible to all employees affected for a period of five (5) days in the seniority district where the position is located.

Employees within that seniority district may, within the bulletin period, file application with the designated official, sending copy to the District Chairman, for one or more (stating preference) of the positions to be filled irrespective of the rate of pay, and an assignment will be made within five (5) days thereafter; the name of the successful applicant will immediately thereafter be posted for a period of five (5) days where the position was bulletined. A copy of all bulletins and assignments will be sent to the District Chairman.

Employees on other seniority districts may also file application for bulletined positions on any seniority district, and in the event bulletined positions are not filled from applicants within the seniority district where the position is located the applicants from other seniority districts will, if they possess sufficient fitness and ability, be given preference over non-employees.

Note: "Non-employees" mean someone who is not in the service or not covered by the Clerks' Agreement.

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## Temporary Appointment.

Rule 7—Bulletined positions may be filled temporarily pending an assignment, and in event no applications received, may be permanently filled without regard to these rules, but must in every incident be bulletined.

## Declining Promotion.

Rule 8—Employees declining promotion or declining to bid for a bulletined position shall not lose their seniority.

## Failure to Qualify.

Rule 9—Employees awarded bulletined positions will be allowed thirty (30) days in which to qualify, and fail-

ing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

#### Former Position Vacant.

Rule 10—When an employee bids for and is awarded a permanent position, his former position will be declared vacant and bulletined.

#### Short or Indefinite Vacancies.

Rule 11—Positions or vacancies of thirty (30) days or less duration, shall be considered temporary, and may be filled without bulletin. If before the expiration of the thirty (30) day period it is found that the position or vacancy will extend beyond the thirty (30) day period the position or vacancy will then be immediately bulletined, and where possible show the probable duration of vacancy.

#### Long Vacancy.

Rule 12—Positions or vacancies known to be of more than thirty (30) days duration will be bulletined and filled in accordance with these rules.

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#### Leave of Absence.

Rule 13—Leave of absence will be granted employees when they can be spared without detriment to the operation of the property, and in case of physical disability and sickness indefinite leave of absence may be granted. If leave of absence extends beyond sixty (60) days the General Chairman will be advised of same.

Employees assigned to temporary positions or duties for a period not exceeding six months will retain their service and seniority standing, and at the conclusion of such assignment will be returned to and take their proper place in the seniority district from which assigned.

#### Bidding After Absence.

Rule 14—An employee, returning after leave of absence, or when relieved from temporary assignment, and or excepted or official position, may return to former position, provided during such absence it has not been bid in by a senior employee displaced from his former position in the exercise of seniority; or may upon his return or within five (5) days thereafter, exercise seniority rights (subject to provisions of Rule 4) to any position bulletined during such absence. In event employee's former position has been abolished during such absence he may then exercise seniority rights (subject to provisions of Rule 4) over any junior employee, if such right is asserted within thirty (30) days after his return. Employees displaced by his return may exercise their seniority in the same manner and subject to same conditions.

#### Reducing Forces.

Rule 15—When reducing forces seniority rights shall govern. When forces are increased employees shall be returned to service in the order of their seniority rights, provided this is done within a period of twenty-four (24) months; otherwise seniority standing is forfeited. Employees desiring to avail themselves of this rule must file their addresses in duplicate with the proper official (the officer authorized to bulletin and award positions) at time of reduction, advise

promptly of any change in address and renew address each ninety (90) days. Employees failing to renew their addresses each ninety (90) days or to return to the service within seven (7) days after being notified (by mail or telegram sent to the address last given) or give satisfactory reason for not doing so will be considered out of the service. The official will sign and return to the employee as his receipt one copy of the address as filed.

Employees who have been cut off on account of reduction in force will continue to hold seniority rights, provided any service has been required of them within a twenty-four months' period, regardless of whether the work performed was regular or relief service.

#### Exercising Seniority.

Rule 16—When the established starting time of a regular position is changed more than one (1) hour for more than six (6) consecutive days, the employee affected may, within ten (10) days thereafter, upon thirty-six (36) hours advance notice exercise their seniority rights to position held by junior employee. Other employees affected may exercise their seniority in the same manner.

#### Change in Rates.

Rule 17—Change in Rates: Except when change in rates result in negotiations for adjustments of a general character, or adjustments due the position, the changing of the rates of a specific position for a particular reason shall constitute a new position.

#### Roster.

Rule 18—Seniority rosters of all employees in each seniority district showing name and proper dating will be

140 posted in agreed upon places accessible to all employees affected. The roster will be revised and posted in January and July of each year and will be open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by employee or his representative such error will be corrected. The duly accredited representative of the employees shall be furnished with copy of roster. Names of employees retaining seniority rights under Rule 22 shall be carried on the seniority roster with an asterisk (\*) placed before such names to properly designate them.

#### Transferring.

Rule 19—Employees transferring from one seniority district or roster to another shall rank from date of transfer on seniority district or roster to which transferred except employees who are promoted from Group 2 or 3 as provided in Rule 3 and last paragraph of Rule 6. When a position is transferred from one seniority district or roster to another, the employee affected shall have prior rights to position transferred. If he elects not to follow his position same shall be bulletined in the seniority district from which position is transferred; thereafter the position shall become a part of and be treated the same as any other position in the seniority district or roster to which transferred. Employees transferring to another seniority district or roster under such circumstances will be given seniority dating on the seniority district or roster to which transferred corresponding to date held by them on seniority district or roster from which transferred.

When, for any reason, the Company consolidates two or more offices or departments, employees affected in each of these departments will retain their seniority and continue to accumulate seniority in the department transferred to.

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## Position Abolished.

Rule 20—Employees whose positions are abolished may exercise their seniority rights over junior employees in their seniority districts; but will be required to avail themselves of this rule within thirty (30) days. Other employees affected may exercise their seniority in the same manner.

## Re-entering the Service.

Rule 21—Employees voluntarily leaving the service will, if they re-enter, be considered new employees.

## Excepted Positions.

Rule 22—Employees now filling or promoted to excepted or official position shall retain all their rights and continue to accumulate seniority in the district from which promoted.

When excepted or official positions are filled by other than employees covered by these rules no seniority rights shall be established by such employment.

## Validating Records.

Rule 23—The applications of new employees shall be approved or disapproved within sixty (60) days after the applicant begins work, unless a longer time is mutually agreed to by the management and the representative of employees.

In event of applicant giving false information, this rule shall not apply.

## Discipline and Grievances Investigation.

Rule 24—An employee who has been in the service more than sixty (60) days or whose application has been formally approved shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employee of his choice or duly accredited representatives. He may, however, be held out of service pending such investigation. He shall, upon request, have not to exceed five (5) days advance notice of such investigation and be apprised in writing of the charges against him. The investigation shall be held within ten (10) days of the date when charged with the offense or held from service. A decision will be rendered within 10 days after the completion of investigation.

## Hearing.

Rule 25—An employee dissatisfied with the decision shall have a fair and impartial hearing before the next proper officer provided written request is made to such officer and a copy furnished to the agent or officer whose decision is appealed, within seven (7) days of the date of the advice of the decision. Hearing shall be granted within seven (7) days thereafter, and decision rendered within seven (7) days after completion of the hearing.

## Appeal.

Rule 26—If an appeal is taken from this hearing it must be filed with the next higher official and a copy furnished the official whose decision is appealed within ten (10) days after the date of the decision.

The hearing of the appeal shall be held within (10) days, and a decision rendered within five (5) days after completion of hearing.

### Grievances.

Rule 27—An employee who considers himself otherwise unjustly treated shall have the same right of hearing and appeal as provided above if written request is made to his immediate superior within seven (7) days of the cause of complaint.

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### Representation.

Rule 28—At the hearing or on the appeal, the employee may be assisted by one or more duly accredited representatives.

### Right of Appeal.

Rule 29—The right of appeal by employees or their representatives in the regular order of succession and in the manner prescribed, up to and inclusive of the highest official designated by the railroad to whom appeal may be made, is hereby established.

### Advice of Cause.

Rule 30—An employee, on request, will be given a letter stating the cause of discipline. A copy of all statements made a matter of record at the investigation or on the appeal will be furnished on request to the employee or his representative.

### Exoneration.

Rule 31—If the final decision decrees that charges against the employee were not sustained, the record shall

be cleared of the charge; if suspended or dismissed, the employee shall be reinstated and paid for all time lost.

### Date of Suspension.

Rule 32—If an employee is suspended, the suspension shall date from the time he was taken out of the service.

### Transportation.

Rule 33—Committees of employees will be granted transportation when possible to obtain, and necessary leave of absence for investigation, consideration and adjustment of grievances.

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### Organized Membership.

Rule 34—No discrimination will be made in the employment, retention or conditions of employment of employees because of membership or non-membership in labor organization.

### Pending Decision.

Rule 35—Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will be neither a shut-down by the employer nor a suspension of work by the employees.

### Hours of Services and Meal-Period.

Rule 36—Except as otherwise provided in these rules, eight (8) consecutive hours' work, exclusive of the meal period, shall constitute a day's work.

### Intermittent Service.

Rule 37—Where service is intermittent, eight (8) hours' actual time on duty within a spread of twelve (12) hours shall constitute a day's work. Employees filling such positions shall be paid overtime for all time actually on duty or held for duty in excess of eight (8) hours from the time required to report for duty to the time of release within twelve (12) consecutive hours, computed continuously from the time first required to report until final release. Time shall be counted as continuous service in all cases where the interval of release from duty does not exceed one (1) hour.

Exceptions to the foregoing paragraph shall be made for individual positions when agreed to between the management and duly accredited representatives of the employees. For such excepted positions the foregoing paragraph shall not apply.

145 This rule shall not be construed as authorizing the working of split tricks where continuous service is required.

Intermittent service is understood to mean service of a character where during the hours of assignment there is no work to be performed for periods of more than one (1) hour's duration and service of the employees cannot be otherwise utilized.

Employees covered by this rule will be paid not less than eight (8) hours within a spread of twelve (12) consecutive hours.

### Reporting and Not Used.

Rule 38—Employees required to report for work at regular starting time, and prevented from performing

service by conditions beyond control of the Company, will be paid for actual time held with a minimum of two (2) hours.

If worked any portion of the day, under such conditions, up to a total of (4) hours, a minimum of four (4) hours shall be allowed; if worked in excess of four (4) hours, a minimum of eight (8) hours shall apply.

All time under this rule shall be at pro rata.

This rule does not apply to employees who are engaged to take care of fluctuating or temporarily increased work which cannot be handled by the regular forces; nor shall it apply to regular employees who lay off of their own accord before completion of the day's work.

#### Length of Meal Period.

Rule 39—Unless agreed to by the majority of employees in a department or subdivision thereof, the meal period shall not be less than thirty (30) minutes nor more than one (1) hour.

#### 146 Continuous Work Without Meal Period.

Rule 40—For regular operations requiring continuous hours, eight (8) consecutive hours without meal period may be assigned as constituting a day's work, in which case not to exceed twenty (20) minutes shall be allowed in which to eat, without deduction in pay, when the nature of the work permits. When work is continuous, requiring some one to relieve the employee for meal period, Rule 39 will not apply.

#### Meal Period.

Rule 41—When a meal period is allowed, it will be between the ending of the fourth hour and beginning of

the seventh hour after starting work, unless otherwise agreed upon by the employees and the employer.

### Working During Meal Period.

Rule 42—If the meal period is not afforded within the allowed or agreed time limit and is worked, the meal period shall be paid for at the overtime rate and twenty (20) minutes, with pay, in which to eat shall be afforded at the first opportunity.

### Changing Starting Time.

Rule 43—Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours notice to the employees affected. (Except seniority district (8).)

### Three Shift Positions.

Rule 44—Where three consecutive shifts are worked covering the 24-hour period, no shift will have a starting time after 12 o'clock midnight and before 5 A. M.

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### Overtime and Calls.

#### Overtime.

Rule 45—Except as otherwise provided in these rules, time in excess of eight (8) hours, exclusive of meal period, on any day, will be considered overtime and paid on the actual minute basis at the rate of time and one-half time. When necessary to work overtime the employee occupying the position on which overtime work is necessary will be given preference to such overtime work.

## Notified or Called.

Rule 46—Except as provided in Rule 47, employees notified or called to perform work not continuous with, before or after the regular work period, or on Sundays and specified holidays, shall be allowed a minimum of three hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half time will be allowed on the minute basis.

## Full Day Period.

Rule 47—Except as otherwise provided in these rules, time work on Sundays and the following holidays—namely: New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas (provided when any of the above holidays fall on Sunday, the day observed by the State, Nation, or by proclamation shall be considered the holiday) shall be paid at the pro rata hourly rate when the entire number of hours constituting the regular week-day assignment are worked.

Rule 48—Employees who have completed their regular tour of duty and have been released, required to return for further service, may, if the conditions justify, be compensated as if on continuous duty.

148 . Rule 49—Employees covered by Groups (1) and (2) Rule 1, heretofore paid on a monthly, weekly or hourly basis shall be paid on a daily basis. The conversion to a daily basis of monthly, weekly or hourly rates shall not operate to establish a rate of pay either more or less favorable than is now in effect.

Nothing herein shall be construed to permit the reduction of days for the employees covered by this rule

below six per week, excepting that this number may be reduced in a week in which holidays occur by the number of such holidays.

#### Absorbing Overtime.

Rule 50—Employees will not be required to suspend work during regular hours to absorb overtime.

#### Authorizing Overtime.

Rule 51—No overtime hours will be worked except by direction of proper authority, except in cases of emergency where advance authority is not obtainable.

#### Notified When Disallowed.

Rule 52—When time is claimed in writing and such claim is disallowed, the employees making the claim shall be notified in writing and reason for non-allowance given.

#### Rating Position.

Rule 53—Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted.

#### Preservation of Rates.

149 Rule 54—Employees temporarily or permanently assigned to higher rated positions shall receive the higher rates while occupying such positions; employees temporarily assigned to lower rated positions shall not have their rates reduced.

A "temporary assignment" contemplates the fulfillment of the duties and responsibilities of the position during

the time occupied, whether the regular occupant of the position is absent or whether the temporary assignee does the work irrespective of the presence of the regular employee. Assisting a higher rated employee due to a temporary increase in the volume of work does not constitute a temporary assignment.

### Rates.

Rule 55—Established positions shall not be discontinued and new ones created under a different title covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules.

### Women.

Rule 56—The pay for women employees for the same class of work shall be the same as that of men, and their working conditions must be healthful and fitted to their needs. The laws enacted for the government of their employment must be observed.

### New Positions.

Rule 57—The wages for new positions shall be in conformity with the wages for positions of similar kind or class in the seniority district where created.

### Attending Court.

Rule 58—Employees taken away from their regular assigned duties at the request of the Management, to attend Court or to appear as witnesses for the  
150 Company, will be furnished transportation and will be allowed compensation equal to what would have been earned had such interruption not taken

place, and, in addition, necessary actual expenses while away from headquarters. Any fee or mileage accruing will be assigned to the Company.

### General.

#### Posting Notices.

Rule 59—At points or in departments where 25 or more employees covered by this schedule are employed, suitable provisions will be made for posting notices of interest to the employees.

#### Duly Accredited Representatives.

Rule 60—Where the term "duly accredited representatives" appears in this agreement it shall be understood to mean the regular constituted committee representing the class of employees covered by this agreement.

#### Incapacitated Employees.

Rule 61—Efforts will be made to furnish employment (suited to their capacity) to employees who have become physically unable to continue in service in their present positions.

#### Machines, Furnished.

Rule 62—Typewriters and other office equipment devices will be furnished by the carriers at offices where the management requires their use.

#### Bond Premiums.

Rule 63.—Employees shall not be required to pay premiums on bonds required by the carrier in handling its business.

### Free Transportation.

Rule 64—Employees covered by this agreement and those dependent upon them for support will be given the same consideration granting free transportation as is granted other employees in service.

151 . General committees representing employees covered by this agreement will be granted the same consideration as is granted general committees representing employees in other branches of the service.

### Service Letters.

Rule 65—Employees whose applications are approved and who have been in the service sixty (60) days or longer, will, upon request, if they leave the service of the Company, be furnished with service letter showing length of time in service, capacity in which employed, and cause for leaving.

### Annual Vacations.

Rule 66—Employees who on January 1st have been in continuous service of the carrier one year or more, will be granted annual vacations with pay provided the work is kept up by other employees and there is no expense to the carrier involved in granting the vacations.

Heads of the departments when granting vacations will give the employees who on January 1st have been in the service continuously, one year and less than two years, one week or six working days; those in the service two years and less than three years, ten days or nine working days; those in the service three years and over, two weeks or twelve working days.

## Effective Date

Rule 67—This agreement shall be effective February 1st, 1937, and shall continue in effect until it is changed as provided herein or under the provision of the Railway Labor Act as amended June 21, 1934.

152 Should either of the parties to this agreement desire to revise or modify these rules, 30 days' written advance notice, containing the proposed changes, shall be given and conference shall be held immediately on the expiration of said notice unless another date is mutually agreed upon.

J. L. WILKES,  
President-General Manager,  
Jacksonville Terminal  
Company.

L. L. WOOTEN,  
General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

153 TRANSCRIPT OF PROCEEDINGS BEFORE  
CURTIS L. WALLER, UNITED STATES  
DISTRICT JUDGE, OCTOBER 17, 1940, AT  
JACKSONVILLE, FLORIDA.

The case was called and the following proceedings had:

By Mr. Hartridge:

This case comes up pursuant to notice given by the Honorable Louie W. Strum, Judge of the District Court, which notice is as follows:

"September 17, 1940:

Messrs.:

Frank F. Engle,  
Attorney for Plaintiff.

Julian Hartridge,  
Attorney for Defendant,  
Jacksonville, Florida.

Gentlemen:

Re: Williams, et al, vs. Jacksonville Terminal  
Company, #237-J. Civil.

The motion for summary judgment filed in the above styled cause will be heard and disposed of by the Court on Thursday, October 17, 1940, at 9:30 o'clock a. m.

In the event said motion for summary judgment be denied, the Court will proceed to a trial of the cause on its merits, and all parties should be ready to present said cause on its merits forthwith, in the event the motion for summary judgment be denied.

Yours very truly,

(S.) LOUIE W. STRUM,

(Louie W. Strum)

U. S. District Judge."

The pleadings were outlined by Mr. Hartridge together with the issue presented by the pleadings.

154 The Court:

Let this be shown in the record:

Plaintiff offered in evidence certain depositions and exhibits thereto, in support of the plaintiff's motion for summary judgment. The depositions were ordered filed in evidence, subject to the right of the defendant to object later to the relevancy or competency.

Mr. Hartridge:

Counsel for the defendant objects to plaintiff's Exhibits 1 to 17 and 19 to 32, inclusive, being received in evidence on the ground that said exhibits and the contents thereof are immaterial and irrelevant, therefore incompetent by reason of the fact that this is an action under Section 16-B of the Fair Labor Standards Act, based upon the claim that the defendant has not paid to the plaintiff the full amount of the minimum wage prescribed by law.

That the contents of said exhibits relate wholly to negotiations and discussions leading up to a collective bargaining agreement, effective June 16, 1939. To be effective June 16, 1939, between this defendant and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; that said collective agreement has no provision relating to or bearing upon the legal right of the defendant, under the Fair Labor Standards Act, to pay its employees wages under the so-called accounting and guarantee plan, an issue in this litigation, and no reference to or bearing upon any of the other issues here involved.

That the right of the defendant, under the Fair Labor Standards Act to pay its employees in the manner here contested, does not rest upon said contract, or any contract involved in or arising out of said negotiations, so far as respect the cause of action under Section 16-B of said Act herein sued upon by the plaintiff, but  
 155 rests instead, upon the legal nature and status of the tips paid to Red Caps, and the incident

of the employer-employee relationship between the plaintiff as the employee and the defendant as their employer.

That the monies paid to plaintiff's Red Caps as tips, were compensation for services rendered by them as employees of the defendant, and lawfully belonged to the defendant by virtue of said fact, and of said employer-employee relationship between plaintiffs and defendant and not by virtue of any contract between plaintiffs and the defendant, arising out of, or in the course of said negotiations.

That the discussions and negotiations which form the subject matter of said exhibits, have no reference to or bearing upon the legal nature and status of said tips, or the incidents of said employer-employee relationship and are, therefore, irrelevant and immaterial to the issue here presented, which is, whether or not, under the method of wage payment adopted and practiced by this defendant, the plaintiffs received the full amount of the minimum wage prescribed by the said Fair Labor Standards Act.

The plaintiff attaches to the depositions the proceedings or findings and recommendations of the presiding officer in a hearing on the proposed amendment of Paragraph 516, relating to records to be kept by employers, and the regulations they are issued under, Section 117, of the Fair Labor Standard Act, which is Exhibit 33.

This was a hearing held before Gustav Peck, designated by an order of the Administrator of the Wage and Hour Division, to take testimony and hear matters with respect to said rights, in which he recites practices of which there was testimony and which the testimony said was in vogue in other companies than the Jackson-

ville Terminal Company, and not a part of this case, and the recommendation by this Examiner, made after the hearing of such testimony.

156 The defendant objects to the introduction of Exhibit thirty-three, same being the findings and recommendations of presiding officer, Gustav Peck, of the Wage and Hour Division of the United States Department of Labor, for the following reasons, to-wit:

1. The same is an investigation made by the Department of Labor solely as to accounting methods.

2. Said exhibit, nor any part thereof, has any bearing on any of the issues settled by the pleadings herein.

3. The same has no legal or probative force as to any of the issues involved herein.

Oral argument having been submitted to the Court by Mr. Hartridge the following further proceedings were had:

The Court:

Do you have anything further? Do you have any further objection?

Mr. Hartridge:

No, sir, that is all I have.

Mr. L'Engle:

Do I understand, and so the Court will understand at this time, as to the objection that you placed on the record in taking the depositions, or as to the materiality of this paper, or as to the authenticity of it, on the other record, there is still a consent to that?

Mr. Hartridge:

There is a consent that this is a correct copy of what it purports to be. There is objection, on the ground it is incompetent.

The Court:

You have reference to the findings of the Department of Labor?

Mr. Hartridge:

Of Gustav Peck.

The Court:

The Court will reserve its ruling.

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Therefore, the Court heard the oral argument of counsel for the respective parties.

It was thereupon stipulated that in the event plaintiffs prevail the sum of One Thousand Dollars (\$1000.00) would be a reasonable fee to be allowed plaintiffs for their attorneys as provided by the Act.

There being no further matters to present the hearing adjourned.

We, the undersigned attorneys of record for the respective parties hereto, do hereby stipulate and agree that the foregoing is a true and correct transcript of the proceedings before Curtis L. Waller, United States District Judge at Jacksonville, Florida, on October 17th, 1940.

(S.) FRANK F. L'ENGLE,

(Frank F. L'Engle)

(S.) JULIAN HARTRIDGE,

(Julian Hartridge)

158 (ORDER DATED OCTOBER 21st, 1940, SUSTAINING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.)

This is a proceeding by and on behalf of the red caps of the Jacksonville Terminal Station to recover amounts alleged to be due as wages under the Fair Labor Standards Act, together with liquidated damages and attorney's fee.

Both sides to this controversy have moved for summary judgment on the pleadings, depositions, affidavits, and stipulations.

The material facts are not in dispute. A summary judgment is, therefore, appropriate.

The defendant, the Terminal Company, hereinafter referred to as "the defendant", admits that it is engaged in interstate commerce, and that the plaintiffs are its employees, and that they are likewise engaged in interstate commerce, by reason whereof the plaintiffs are entitled to be paid the minimum wages provided by Section 6 of said Fair Labor Standards Act, which wages the defendant contends the plaintiffs have received by way of tips or sums paid by passengers in its terminal station to red caps for handling the luggage, etc., of said passengers.

159 The plaintiffs contend that the sums received from passengers by way of tips are gifts or gratuities belonging to the plaintiffs, and are not to be considered as "wages", within the meaning of the Fair Labor Standards Act. The sole question presented for

determination is whether or not the sums so received by said red caps as tips should be considered or construed as "wages". If said tips are to be construed as wages under the Fair Labor Standards Act, then the plaintiffs have received in excess of the minimum wage provided by the Act and, therefore, have no right of action.

It is appropriate that a history of the relationships between the red caps and the defendant should be reviewed. It appears that for more than a dozen years the plaintiffs, commonly called "red caps", performed services in the terminal station of the defendant in carrying luggage and personal effects of passengers boarding and alighting from trains at said terminal station; that the sole compensation received by the red caps came from the sums paid by such passengers to said red caps in consideration of the services rendered the passengers in handling their luggage; that no wages or other compensation was paid by the terminal company to said red caps; that the red caps, however, were required to observe certain hours, rules, and regulations imposed by the terminal company for the infraction of which the red cap would be denied the right to continue so to work, which denial of right so to work might be temporary or permanent in nature; that the Terminal Company furnished the red caps with uniforms; that no part of the sums paid by the passengers to the red caps was ever paid over to the Terminal Company; that whatever the red cap made he kept; that the red cap had no right to fix a definite charge for any service but was expected to accept whatever the passenger saw fit to give him; that the Terminal Company, prior to 1938, considered the red cap as a licensee or independent contractor, obliged to conform to established rules and regulations of the station; that in 1938, the Interstate Commerce Commission classi-

fied or characterized such red caps as employees of the Terminal Company as distinguished from independent contractors or licensees; that this ruling of the Interstate Commerce Commission was handed down less than thirty days before the effective date of the Fair Labor Standards Act.

The Terminal Company, pursuant to the above ruling of the Interstate Commerce Commission declaring red caps to be employees, and in contemplation of the Fair Labor Standards Act, served the following notice on the red caps:

"In view of the requirements of the Fair Labor Standards Act, effective October 24, 1938, and in consideration of your hereafter engaging in the handling of hand baggage and travelling effects of passengers or otherwise assisting them at or about stations or destinations, it will be necessary that you report daily to the undersigned the amounts received by you as tips or remuneration for such services.

"The carrier hereby guarantees to each person continuing such service after October 24, 1938, compensation which, together with and including the sums of money received as above provided, will not be less than the minimum wage provided by law.

"You are privileged to retain subject to their being credited on such guarantee all such tips or remuneration received by you except such portion thereof as may be required of you by the undersigned for taxes of any character imposed upon you by law and collectible by the undersigned.

"All the matters above referred to are subject to the right of the carrier to determine from time to time the

number and identity of persons to be permitted to engage in said work and the hours to be devoted thereto to establish rules and regulations relating to the manner, method and place of rendition of such service, and the accounting required."

Said notice at least had the effect of advising the plaintiffs of the construction which the defendant proposed to place on the compensation received by the red caps by way of so-called tips. It does not appear that the red caps acquiesced in or consented to the plan set

forth in said notice, although they purported to  
161 comply therewith in the matter of reporting the amount received by them as tips. However, it

appears that the plaintiffs, through their representative, contemplated further negotiations and a later determination of the question either by the Administrator of the Wages and Hours Act or in some judicial proceeding. Neither side contends that the notice, negotiations, and discussions amounted to a contract, and both sides agree that parties could not contract themselves from under the provisions of said Fair Labor Standards Act.

There is no contract; there is no estoppel; but the said notice and correspondence relative to the subject were admitted in evidence solely for whatever light the same might shed on the construction that the parties themselves might have placed on the question of whether these tips were considered as wages or compensation for services rendered by the plaintiffs.

Whenever the amount collected by the red cap from passengers was less than the minimum wage prescribed by Section 6, Fair Labor Standards Act, the defendant paid the red cap the difference, so that, from both sources, plaintiffs have received an amount not less than the minimum called for by said Act.

### Conclusions of Law

The sole substantial question to be determined by the Court is whether or not the sums paid by the passengers to the red caps, either as compensation, as tips, or as gratuities, can be construed to be wages within the intent and purpose of the Federal Wages and Hours Law. Paragraph (m) of Section 203, Title 29, U. S. C. A. (Fair Labor Standards Act of 1938), is as follows:

"(m) 'Wage' paid by any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employee."

162 In other words, "wages paid to an employee" may include board, lodging, and other facilities, if such other facilities are customarily furnished by the employer to his employee. The reasonable cost of board, lodging, and the like, may be determined by the Administrator; that is to say, that the Administrator has the right, probably the duty, to determine whether or not the cost of the things charged to the employee as wages is reasonable. The Act does not prohibit the compensation of a wage earner with something other than money paid out of the pocket of an employer, but whatever is charged as a wage must be reasonable. If, however, the "other facilities" happen to be money, there is no "reasonable cost" to be determined by the Administrator. For example, if Jones pays his truck driver fifteen cents an hour and permits him to use his truck to haul for other people, whereby the truck driver makes an additional fifteen cents an hour, there would be nothing for the Administrator to determine as to the reasonable cost

of their arrangement. The main point is, does the truck driver receive the wages required by the Act, and if he received a portion from Jones as fixed wages and the balance from instrumentalities furnished by Jones under circumstances that the matter of reasonable cost was not involved, it would seem there was nothing for the Administrator to determine. It would also seem that the letter of the Act itself contemplates the use of facilities in the matter of payment of wages.

In the instant case it has not been disputed that the Station and the passengers were facilities furnished by the employer without which there would neither be employee nor wages.

The terminal station, with all its facilities, belonged to the defendant. It had the legal right to deny the use of those facilities to persons who would use it as a place of business. It likewise had the legal right to extend a privilege to anyone it saw fit who would observe appropriate rules and regulations and otherwise observe the conditions under which the privilege or license was granted. It had the legal right to exact payment from concessionaires using its facilities for profit, and to require the observance of its known and reasonable regulations; or it had the legal right to waive the payment of a consideration.

The services performed by plaintiffs were for the passengers—not the Terminal Company. Their compensation was paid by the passengers—not the Terminal Company. The compensation so paid went to the red cap—not the Terminal Company. Neither the Railroad Company nor the Terminal Company was under any obligation, contractual or otherwise, to carry the passenger's luggage from the train to the taxi, or elsewhere. The

passenger merely accepted the red cap's proffered service, and from immemorial custom there perhaps arose an implication that the server would be compensated,—the recipient of the service being the sole judge of the amount of such compensation. The amount of the red cap's earnings would doubtless generally depend on good fortune, good manners, good customers, the number of passengers, the weight and number of parcels handled, the alacrity with which the red cap bestirred himself, and other factors partly within his own control, but entirely beyond the control of the Terminal Company, which latter merely furnished him the opportunity and the facility wherein and wherewith to ply his trade. Because of the foregoing course of dealing, I reject the theory that the plaintiffs were wage-earning employees within the intent and purposes of the Fair Labor Standards Act. They were working for themselves and the passengers whom they served and whose orders they obeyed in that service.

However, if we concede that they were employees and within the Act, we would still find that, in cash paid directly and through the facilities furnished by the employer, plaintiffs have been paid, in the aggregate, considerably in excess of the minimum wages required by said Act. It would seem immaterial whether the employee was paid by the employer directly or whether he was paid through an instrumentality or facility set up for his use and benefit by the employer. The question is did he receive, either directly or indirectly, for his services a sum not less than the minimum required by the Act. It is not a question of who paid him, but of how much he was paid.

It must not be overlooked that the Terminal Company had the legal right, if it had chosen, to have fixed and collected a fee for the service so rendered, and to have

received the same, but as an incentive to better service, it allowed the red cap to keep all he collected. If he collected more than the legal minimum wage, it was his good fortune—a reward for his hustling—but if he failed to collect the minimum provided by the Act the defendant paid him the difference between the amount collected and the statutory minimum. The red cap stood to win. He could not lose. The company stood only to lose. It could never win. The red cap could often receive for his services more than the minimum wage but never less. Since, therefore, the red cap was compensated by the transfer to him of a legal right of the company to charge and collect fees for these services, the legal effect or result is the same, as far as the red cap is concerned, as if the company had collected these fees and paid the red cap directly instead of indirectly.

The intent of an act is the essence thereof, and the intent thereof should be given effect as against the mere words of an act when the mere words, construed alone, would produce legislative or judicial brigandage. The Court believes that the wording of the Act in defining "wages" provides that things other than the direct payment of money can be used in the payment of wages. The plaintiffs here were paid in money, but in an indirect way—through facilities afforded the plaintiffs by defendant. No question of determination of "reasonable cost" is involved. They were compensated in money which the defendant had the legal right to collect and to keep if it rendered the services through its employees as contended. There can be no substantial difference between compensation for services rendered and wages for services rendered.

service performed: It never intended that Section 6 of the Act should do more than that. In the present case the plaintiffs, as a group, received out of their relationship, or employment, some \$3000.00 in excess of the minimum wage required by law. They here seek to be paid again all sums which they have received out of their relationship, or employment, plus an equal amount as liquidated damages, plus attorney's fee. I subscribe wholeheartedly to the real purpose of the Act as I conceive it, but I cannot ascribe to Congress the superlative folly of intending that an employee, under the circumstances of this case, wherein no element of wilfulness is involved, should recover the minimum wage thrice multiplied.

It is, therefore, Ordered that:

The motion for summary judgment for the defendant is sustained. The motion of plaintiffs for a summary judgment in their favor is denied. The complaint is hereby dismissed, and the plaintiffs shall take nothing by their suit. The costs, to be taxed by the Clerk, are adjudged against the plaintiffs.

Done and Ordered this 21st day of October, A. D. 1940.

CURTIS L. WALLER,  
U. S. District Judge.

## MOTION FOR NEW TRIAL.

Comes now the plaintiffs herein and move this Honorable Court for a new trial on the following grounds:

1. The Court erred in its order of October 21, 1940:
2. Said order was contrary to law.
3. Said order was contrary to the evidence.
4. Said order was contrary to the law and the evidence.
5. The Court erred in overlooking the evidence in the hearing before Gustav Peck, Exhibit 33, showing that Terminal Company practices under the Accounting and Guarantee Plan resulted in Red Caps reporting through fear the minimum tips regardless of whether earned.
6. The Court overlooked in said Exhibit 33 the finding that under said Accounting and Guarantee Plan, the Terminal Company at first required that Red Caps report, as hours, only the time actually spent in carrying bags, eliminating the solicitation time.
7. The plaintiff proffered testimony to show that by practices of this defendant, the plaintiffs or some of them, through ignorance or fear of disciplinary action, reported as earned sufficient tips to amount to the minimum, despite the fact that they were not earned.
8. The testimony shows that the plaintiffs and the defendant, prior to action of Wages and Hours Administration by the Administrator in June, 1938, required the men to report as hours of service only the minutes actually consumed in carrying bags.

167 9. The Court overlooked the contract of the parties on all working conditions save wages and hours to keep the matter in status quo.

10. The Court overlooked the protest of the men at all times and the refusal of the men to accede to the appropriation of their tips.

11. The Court overlooked the fact that the Terminal Company has never paid these minimum wages at one time and stands to be unjustly enriched by \$32,000.00 of the Red Caps personal property.

12. That the construction placed by the Court of the Fair Labor Standards Act is that such law places a veiling on pages and not a minimum wage.

13. That the fact that the Red Caps, by their prior employment, made more than the Fair Labor Standards Act guarantees is immaterial to the consideration of the question of whether or not the minimum wages provisions of the Act has been complied with.

14. That the Court overlooked the fact that it was stipulated by counsel for respective parties that these Red Caps were employees of the Terminal Company under the terms of the Fair Labor Standards Act and the contention of the Red Caps prior to the effective date of the Act was that the tips belonged to them and not the Terminal Company, and requested the Company to pay them the minimum wages.

15. The fact that the parties continued in the relation of employee and employer during the time from the effective date of the Act to July 1st, 1940, should be considered along with the stipulation of counsel, the record and the acquiescence by the Terminal Company by their continued

acceptance of the fact that the ownership of tips in relation to minimum wage was a matter for judicial determination.

168            16. The present manner of payment under the terms of the Fair Labor Standards Act beginning July 1st, 1940, wherein the Terminal Company is now paying the \$2.40 now required by the Act and requiring the Red Caps to sell checks for ten cents apiece on baggage handled by them is indicative and controlling in construing how the Terminal Company considered the question of tips.

FRANK F. L'ENGLE,  
Attorney for Plaintiffs.

#### PROOF OF SERVICE OF COPY.

I, Julian Hartridge, counsel of record for defendant in the above entitled cause, hereby acknowledge receipt of copy of Motion for New Trial.

Jacksonville, Florida, October 30, 1940.

JULIAN HARTRIDGE,  
Attorney for Defendant.

#### 169 (ORDER DENYING MOTION FOR NEW TRIAL.)

The motion of the plaintiffs for a new trial having been, by consent of counsel, submitted to the Court without argument and the Court having considered the same is of the opinion that the said motion should be, and the same is hereby overruled.

Done and Ordered this 6th day of November, A. D. 1940.

CURTIS L. WALLER,  
U. S. District Judge.

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## NOTICE OF APPEAL.

In the District Court of the United States for the Southern  
District of Florida, Jacksonville Division, 237-J Civil.

C. L. Williams, Individually and as duly appointed and  
authorized agent and representative for Herbert Aiken,  
et al., Plaintiffs,

vs.

Jacksonville Terminal Company, a corporation, Defendant.

Notice is hereby given that C. L. Williams, et al., entered  
in the above styled and numbered cause is hereby appealed  
to the Circuit Court of Appeals of the United States for  
the Fifth Circuit from the final judgment entered in this  
action on October 21, A. D. 1940, and order denying motion  
for new trial entered November 6th A. D. 1940.

(S.) FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for C. L. Williams,  
et al., Plaintiffs.

525 Barnett Nat'l. Bank Bldg.,  
Jacksonville, Florida.

Received copy of foregoing notice of appeal this 23rd  
day of November, 1940 at Jacksonville, Florida.

(S.) JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Jacksonville  
Terminal Company, a  
corporation, Defendant.

304. Bisbee Bldg.,  
Jacksonville, Florida.

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## APPEAL BOND.

(Title Omitted.)

Know All Men By These Presents: Whereas in the above entitled cause in the District Court of the United States for the Southern District of Florida, Jacksonville Division, at a regular term of Court to-wit: on or about the 6th day of November, A. D. 1940, in a suit therein pending wherein C. L. Williams, Individually and duly appointed and authorized agent and representative for Herbert Aiken and others were Plaintiffs and Jacksonville Terminal Company, a corporation was defendant did enter its Final Order or Judgment denying the Motion for Summary Judgment for the Plaintiffs and did in said Order sustain the Motion the Motion for Summary Judgment of the Defendant and dismiss the Complaint of the Plaintiffs and assess the cost of said cause against the Plaintiffs, from which Final Order or Judgment, C. L. Williams, individually and as duly appointed and authorized agent and representative for Herbert Aiken and others, each plaintiffs, desires to take an appeal to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana:

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Now therefore, we, C. L. Williams individually and as duly appointed and authorized agent and representative for Herbert Aiken and others, as principal and Fidelity and Deposit Company of Maryland, a corporation, as surety, acknowledge ourselves bound to pay to Jacksonville Terminal Company, a corporation the sum of Two Hundred Fifty Dollars (\$250.00) condition, that the plaintiffs shall prosecute their appeal to final effect and shall pay the cost on appeal if their said appeal is dismissed, then the above obligation to be void; else to remain in full force and virtue.

Wherefore, we have hereunto set our hands this 25th day of November, A. D. 1940.

C. L. WILLIAMS,  
(C. L. Williams)

(Seal)

Individually and as duly appointed and authorized agent for Herbert Aiken, et al.

FIDELITY & DEPOSIT COMPANY OF MARYLAND.

By JOHN S. KENNEDY,  
Attorney in Fact.

(Seal)

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### ~~DIRECTIONS~~ TO CLERK.

(Title Omitted.)

The Clerk of the Court will please forward the transcript of record herein to the Clerk of the Circuit Court of Appeals for the Fifth Circuit at New Orleans, the said transcript of the record to include the following papers.

1. Complaint, omitting therefrom the Bill of Particulars.
2. Summons.
3. Answer, omitting from the Bill of Particulars attached thereto, the re-capitulation and the Bill of Particulars for the following named plaintiffs: Edward Kittles; Henry Floson; Fleming Williams, Jr.; Henry Perry; Charles L. Williams; John W. Speights; Clarence Davis; Charles Brooks; Silas W. Owens; Vandy Blake; Andrew Lang; William Petty; Willie Anderson; and substituting therefor the re-capitulation and the Bill of Particulars as to each of the foregoing named plaintiffs attached to the Stipulation filed October 11th 1940.

4. Defendants Motion for Summary Judgment and Notice of Motion and supporting affidavit of John L. Wilkes.

5. Stipulation, filed October 7th, 1940.

6. Plaintiff's Motion for Summary Judgment and Notice.

174 7. Stipulation filed October 11th, 1940.

8. Depositions and Exhibits before Raleigh Dowling, and R. W. Pattison, Notaries Public and offered in evidence at the hearing on Motions for Summary Judgment of both parties before Curtis L. Waller, United States District Judge at Jacksonville, Florida, October 17th, 1940.

9. Transcript of Proceedings before his Honor, Curtis L. Waller, United States District Judge, October 17th, 1940, as agreed upon by counsel for the parties thereto.

10. Order dated October 21st, 1940, sustaining defendant's Motion for Summary Judgment; and denying plaintiff's Motion for Summary Judgment.

11. Motion for New Trial.

12. Proof of service of Copy of Motion for New Trial.

13. Order denying Motion for New Trial.

14. Notice of Appeal.

15. Appeal Bond.

16. Stipulation for Preparation of Transcript of Record, attached hereto.

17. Directions to Clerk.

(S.) FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for Appellants.

525 Barnett Nat'l. Bank Bldg.,  
Jacksonville, Florida.

Received a copy of the foregoing Directions to Clerk  
this 29th day of November, A. D. 1940.

(S.) JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for Defendants.

304 Bisbee Bldg.,  
Jacksonville, Florida.

175 Counsel for defendant has no additional directions to the Clerk and consents that the Clerk may forthwith proceed with the record under the directions of plaintiff, and Counsel for the respective parties both agree that the above record includes all of the proceedings in the action.

(S.) JULIAN HARTRIDGE,

(Julian Hartridge)

Attorney for defendant.

304 Bisbee Bldg.,  
Jacksonville, Florida.

(S.) FRANK F. L'ENGLE,

(Frank F. L'Engle)

Attorney for plaintiffs.

525 Barnett Nat'l. Bank Bldg.,  
Jacksonville, Florida.

176 United States of America,  
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from one to one hundred seventy-five, inclusive, contain a correct transcript of the record of the judgment in the case of C. L. Williams, Individually and as duly appointed and authorized agent and representative for Herbert Aiken, et al., Plaintiffs, against Jacksonville Terminal Company, a corporation, Defendant, and a true copy of all such papers and proceedings in said cause, as appear upon the records and files of my office, that have been directed to be included in said transcript by the written demands of the said parties.

In Witness whereof I hereunto set my hand and affix the seal of said Court at Jacksonville, Florida, this 10th day of December, A. D. 1940.

EDWIN R. WILLIAMS,  
(Edwin R. Williams)  
Clerk.

(Seal)

That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 5th, 1941

No. 9754

C. L. WILLIAMS, Individually and as Duly Appointed and Authorized Agent and Representative for Herbert Aiken, et al.,

versus

JACKSONVILLE TERMINAL COMPANY

On this day this cause was called, and, after argument by Frank F. L'Engle, Esq., for appellants, and John Dickinson, Esq., for appellee, was submitted to the Court.

OPINION OF THE COURT AND DISSENTING OPINION OF HOLMES,  
CIRCUIT JUDGE—Filed March 4, 1941

— IN THE —  
**United States Circuit Court of Appeals**  
**FOR THE FIFTH CIRCUIT**

— ● —  
**No. 9754**

**C. L. WILLIAMS, INDIVIDUALLY AND AS DULY AP-  
POINTED AND AUTHORIZED AGENT AND REP-  
RESENTATIVE FOR HERBERT AIKEN, ET AL.,**

**Appellants.**

**versus**

**JACKSONVILLE TERMINAL COMPANY,**  
**Appellee.**

*Appeal from the District Court of the United States  
for the Southern District of Florida.*

—  
(March 4, 1941.)  
—

Before FOSTER, SIBLEY, and HOLMES,  
Circuit Judges.

SIBLEY, Circuit Judge: This suit was brought under Section 16(b) of the Fair Labor Standards Act, 29 U. S. C. A. §201-219, in behalf of the station porters, called red caps, who worked at the Jacksonville Terminal between Oct. 24, 1938, the date the Act went into effect, and July 1, 1940, when a new wage arrangement was put into

2 Williams, et al. v. Jacksonville Terminal Co.

effect, to recover unpaid wages and an equal amount as liquidated damages. The main facts were admitted or stipulated, and on motions for summary judgment made by each side the decision was against recovery, and the red caps appeal.

Prior to October, 1938, these red caps, like others at many larger railroad terminals throughout the United States, were selected on their applications, by Jacksonville Terminal Company, furnished with uniforms which included red caps, and permitted to offer their services especially as porters of hand baggage to the passengers taking or leaving trains; they to look wholly to the passengers for their pay, but not to demand or argue about it but to take what was offered. The Terminal Company regarded the red caps not as employees, but as licensees permitted to do their own business on its premises on the conditions it laid down. On Sept. 29, 1938, the Interstate Commerce Commission made a decision, *Ex Parte* No. 72, 299 I. C. C. 410, that the red caps were employees for the purposes of the Railway Labor Act, and entitled to organize as such. If employees, they would on Oct. 24 become entitled to wages not less than twenty-five cents per hour for one year, and thirty cents per hour thereafter, under the Fair Labor Standards Act, Sect. 6, 29 U. S. C. A. §206. In recognition of this the Jacksonville Terminal Company, (as did other terminal companies), gave each red cap a written notice which referred to the Act and stated that in consideration of engaging in the handling of hand baggage and assisting passengers otherwise, the red cap must report daily to the Terminal Company "the amounts received by you as tips or remuneration for such services"; and that the Terminal Company guaranteed to each person continuing such service after Oct. 24, 1938, compensation which, including the sums above referred to, would not be less than the minimum provided by law; that tips or remuneration in excess of the minimum wage

and taxes might be retained by the recipient; and the right to make rules and regulations for the service and the accounting was asserted by the Terminal Company. The red caps claimed to be already organized for collective bargaining and their representative did not wish this "accounting and guaranty" plan of payment to be entered upon independently of a collective agreement with the red caps. No collective agreement was reached for about a year, and then it did not cover wages, there being an understanding that the validity of the accounting and guaranty plan under the law should be determined by the courts. In the meanwhile the red caps continued to serve and did account for their tips as required, until on July 1, 1940, another plan was put into effect whereby the Terminal Company directly paid fixed wages, and required the red caps to collect from passengers and turn in ten cents per parcel handled, under a system of baggage checks. Some of the red caps had received between Oct. 24, 1938, and July 1, 1940, more than minimum wages in tips and were paid nothing besides. All others had their deficits made up by the Terminal Company. In the aggregate, the Company had supplemented tips by an amount of \$8,321; and tips amounting to \$3,019 in excess of minimum wages had been retained by the recipients. Each red cap had received money equal to the minimum wage, or more. But the red caps say they never did agree expressly to this plan of payment, and outside of the \$8,321 they had been paid nothing by the Company, the tips being their own money. They claim a sum of \$59,923. The Terminal Company contends that the tips, especially after the notice, were the income of its own business, that the red caps have been fully paid with the Company's money, and that to require triple payment would be "legal brigandage". We think the vital question is, Whose money were the tips?

We will not stick upon the general meaning of the word "tip". Webster's International Dictionary makes the tip

to be a gift, a fee; and defines a fee as a compensation for service rendered. The Standard Dictionary says a tip is money given, as to a servant, to secure better or more prompt service. It would seem that a tip may range from a pure gift out of benevolence or friendship, to a compensation for a service measured by its supposed value but not fixed by an agreement. Most often the term is applied to what is paid a servant *in addition* to the regular compensation for his service, to secure better service or in recognition of it. But the Fair Labor Standards Act makes no reference to "tips", and the notice given the red caps refers to "tips or remuneration". We are not concerned with the proper meaning of the word, but with the legal status of what the passengers paid these red caps, by whatever name called. Along with dictionary definitions, we put aside a number of decisions cited about the ownership of tips; somewhat conflicting, because each dealt with its own kind of tip and none from an appellate court dealt with money paid a red cap by a passenger.

This record makes no effort to prove or agree on the actual intention of passenger, red cap, or Terminal Company, when at any time a porter service was rendered and remunerated. It is left to common knowledge and reasonable inference. Railroad travel is so general and red cap service so familiar that it may well be considered, as it touches the passenger, a matter of common knowledge. We so deal with it. Before the day of red caps the passenger depended for assistance on the chance presence of some jobless person, and paid him for his help. The red caps took the place of the jobless ones at large terminals, and rendered a supervised service; but the railroad carriers were not bound to afford any such service to the passenger, and the reward of it was left a matter between red cap and passenger, with the stipulation that the amount should be left to the passenger and there should never be annoyance or embarrassment about it. It may be that the red

caps were always employees of the Terminal Company in that it selected them and was probably answerable for their honesty and carefulness; but they were not employees for wages, their time and efforts were their own, and what they earned belonged to them. Passengers understood this; they knew that what they paid did not go to the Terminal Company, but was the meat and bread of the red cap. What they paid was influenced by the generosity and wealth of the passenger as well as by the number and weight of his bags, and at times by the needy appearance or the cheerfulness and promptness of the red cap. But in every case the tip was primarily a compensation for service, and not a gift. The red cap expected nothing unless he served. No passenger ever gave a red cap anything unless there was service. Every passenger paid for service unless he or she was very stingy or financially unable, or else ignorant that pay was expected. The acceptance of service carried an expectation of reward on both sides. What the red cap received was not gifts but earnings. If they amounted to enough he owed income taxes on them; and they belonged to him, either because the business was his, or if an employee, because his employer conceded them to him.

A great change occurred Oct. 24, 1938. The red caps had successfully established a status as employees and a right to organize. The Fair Labor Standards Act said that as employees they are *ipso facto* on wages whose amount should not be less than fixed sums per hour. Since the employer became absolutely bound to pay these sums for those hours and for the labor to be done in them, necessarily the work was his, and the product of it was his. The employer did not have to consent to this, nor did the employee. The law made the change for both. By merely maintaining their relationship each became bound by the law. Because what was received from passengers was not gifts but pay for services valued by the passenger,

it required no consent on the part of the red caps to make the earnings belong to the employer, who was now bound to pay for the time and efforts of the red caps during work hours. The red cap's reward was to be wages. The employer became entitled to his services and what was received for them. The notice given the red cap was sufficient to make his receipts the money of the employer.

The passengers after Oct. 24 still paid for service as before; but whether they realized it or not, they were now paying the Terminal Company for it. If they knew, they might have paid less, but the elimination of the human sympathy element would only make it more clear that what was paid was for service—not a gift. A pure gift, if one were ever made, would still belong to the red cap unless controlled by special arrangement with the employer, but the burden would be on the red cap to prove a gift in special instances. None are proven here.

The Act undoubtedly contemplates that the employee shall be paid his wages by the employer out of the employer's funds. But it does not prohibit the employee being given the duty of collecting the employer's money, and the privilege of paying himself out of it, subject to accounting, provided the employer stands ready to promptly pay any balance due the employee. For example, an interstate trolley company might authorize its conductor to collect cash fares, and account for them thus. The fares would belong to the employer, but the conductor might take and spend them to the extent of his wages, because the employer had authorized it. Otherwise he could not. We perceive no breach of the minimum wage provisions of the law in such an accounting arrangement fairly and promptly carried out. But we are far from saying that it is desirable. It is said in this record that as applied to red caps it has sometimes resulted in their reporting more tips than they received with a purpose to hold their jobs,

and so lost part of their wages. Under Section 11(c) of the Act, 29 U. S. C. A. §211(c), the Administrator has large power over the question of records, including accountings, and if the Administrator should find that any system of accounting practically interferes with the working of the Act, he could consider what regulation he should make. We do not think the Act condemns *ipso facto* all payment of wages by accounting, or requires us to say that although the employee got all he ought to have had of his employer's money, the employer must pay again because the employee was allowed to keep what was in his possession instead of paying it to the employer and receiving it back again.

The provision of Section 3(m), 29 U. S. C. A. §203(m), "Wage paid to any employee includes reasonable cost, as determined by the administrator, to the employer of furnishing such employee with board, lodging or other facilities . . .", refers to wage payments other than in money, and has no bearing upon the case. No credit on wages is claimed by reason of anything furnished, except the money retained by the employee. The uniforms furnished the red caps as clothing might come within the definition, but the terminal and its trucks and rolling chairs and its equipment are not facilities furnished. The last named are not furnished to the red caps as their facilities, but are things which the employer keeps for use in his own business, and which he employs the red cap to use. The recompense for them is to come not from the wages of the red caps, but from the income of the business, including the collections by the red caps from the passengers.

When it is clearly apprehended that red cap tips are not personal gifts, but compensation for service which since Oct. 24, 1938, is rendered by the red caps for the Terminal Company for a wage which the Terminal Company is absolutely bound to pay, it becomes plain that the tip money

is the money of the Terminal Company, irrespective of the consent of the red caps; and when they are paid their wages in part or in whole out of it, they are not paid with their own but their employer's money.

### JUDGMENT AFFIRMED.

HOLMES, Circuit Judge, dissenting:

The adage that hard cases make bad precedents is very true. I am afraid the adage is exemplified in this case, but the principle involved is more important than the amount of money sought to be recovered.

This case turns largely upon the meaning to be given the word *tips*. If what the red caps received were gifts or gratuities, they had the right to keep them for themselves. Whatever moral compulsion one may have been under to tip red caps, Pullman porters, or other employees, there was no legal obligation to do so during the period here involved. I think if Congress had intended that tips should be included in the meaning of the word *wages*, it would have said so.

The majority opinion is not concerned with the proper meaning of the word *tips*. It says: "along with dictionary definitions, we put aside a number of decisions cited about the ownership of tips, somewhat conflicting, because each dealt with its own kind of tip and none dealt with money paid a red cap by a passenger."

The general rule is that words should be given their usual and ordinary meanings, unless the contrary clearly

appears from the circumstances in which they are used. I dissent for the above and the further reasons fully stated by the district court in its opinion reported in *Pickett v. Union Terminal Co.*, 33 Fed. Supp. 244.

A True copy:

Teste:



Clerk of the United States Circuit Court of  
Appeals for the Fifth Circuit.

## JUDGMENT

Extract from the Minutes of March 4th, 1941

No. 9754

C. L. WILLIAMS, Individually and as Duly Appointed and  
Authorized Agent and Representative for Herbert Aiken,  
et al.,

versus

JACKSONVILLE TERMINAL COMPANY

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, C. L. Williams, individually and as duly appointed and authorized agent and representative for Herbert Aiken, and others, and the surety on the appeal bond herein, Fidelity and Deposit Company of Maryland, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Holmes, Circuit Judge, dissents."

MOTION AND ORDER STAYING MANDATE—Filed March 27, 1941

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 9754

C. E. WILLIAMS, Individually and as Duly Appointed and  
Authorized Agent and Representative for Herbert Aikens,  
et al., Appellants,

VERSUS

JACKSONVILLE TERMINAL COMPANY, a Corporation; Appellee

APPLICATION FOR STAY OF MANDATE

To the Honorables, the Judges of the United States Circuit  
Court of Appeals for the Fifth Circuit:

Comes now the appellants, C. E. Williams, Individually  
and as duly appointed and authorized agent and representa-  
tive for Herbert Aikens, et al.; and respectfully represents  
that the appellants above named desire to file with The Su-  
preme Court of the United States of America, a petition  
for a Writ of Certiorari to review the judgment of this  
Honorable Court rendered in this cause in affirming the  
Judgment of the District Court of the United States for the  
Southern District of Florida.

Wherefore, the appellants respectfully apply for an Order  
of this Honorable Court, staying the mandate herein for a  
reasonable time in order to allow appellants an opportunity  
to prepare and present their Petition for a Writ of Cer-  
tiorari to the Supreme Court of the United States of  
America.

(Signed) Frank F. L'Engle, Attorney for Appel-  
lants, Montague Rosenberg, Of Counsel.

Copy of the foregoing application for stay of mandate  
received the 13th day of March, A. D. 1941.

(Signed) Julian Hartridge, John Dickinson, Attor-  
neys for Appellee.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH  
DISTRICT

No. 9754

C. L. WILLIAMS, Individually and as Duly Appointed and  
Authorized Agent and Representative for Herbert Aiken,  
et al., Appellants,

versus

JACKSONVILLE TERMINAL COMPANY, Appellee

On Consideration of the Application of the appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 17th day of March, 1941.

(Signed) Saml. H. Sibley, United States Circuit  
Judge.Clerk's Certificate to foregoing transcript omitted in  
printing.

(4591)



## 7 SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7483)